

## Terms & Conditions

### 1 INTERPRETATION

1.1 In these Terms & Conditions (which expression includes the quote, schedules and any attachments to them) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

Business Day means any day except for a Saturday, Sunday or Public Holiday;

Change Request means a request to change (including to cease) any service or to add any new service to the Services or a request to amend this Agreement or any document attached to or referred to in it;

Client IT Equipment means the Hardware, the Operating System and the Third Party Software Applications set out in the agreement or if amended in writing to the client from time to time by ClubWizard Ltd;

Commencement Date means the date at which ClubWizard Ltd will commence provision of the Services as set out in this Agreement;

Contact Point means the contact details (either telephone or email) of ClubWizard Ltd notified to the Client from time to time by which the Client may make a Support Request;

Disaster means an event defined as a Disaster in the Disaster Recovery Plan;

Disaster Recovery Plan means the Client's plan which sets out the procedures to be adopted in the event of a Disaster;

Hardware means the hardware detailed in this Agreement;

Initial Term means the Initial Term as set out in this Agreement;

Intellectual Property means property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, database rights and present and future copyright) subsist and, where the context so admits, includes such intellectual property rights;

Month means a calendar month;

Office Hours means the period between 09:00 and 18:00 on a Business Day;

Operating System means the Client's operating system that is operated on their Hardware;

Out of Office Hours means the periods between 0:00 and 08:59 and 18:01 and 23:59 on a Business Day and 24 hours a day on any day that is not a Business Day;

Service Charge means the Service Charge as set out in this Agreement;

Service Level means the service level set out in this agreement in accordance with which ClubWizard Ltd is to provide the Services;

Services means the services set out in this agreement;

Site means the Client's premises at which the Client IT Equipment is located as set out in this Agreement;

Support Request means a request for support in respect of the Operating System by the Client pursuant to this Agreement;

VAT means Value Added Tax.

1.2 The headings in these Terms & Conditions do not affect its interpretation. Save where the context otherwise requires, references to clauses and Schedules are to clauses and Schedules of these Terms & Conditions.

1.3 Unless the context otherwise so requires:

1.3.1 references to the Client and ClubWizard Ltd include their permitted successors and assigns;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

1.3.3 references to any gender include all genders.

1.4 In the case of conflict or ambiguity between any provision contained in the body of these Terms & Conditions and any provision contained in any Schedule, the provision in the body of these Terms & Conditions shall take precedence.

### 2 SUPPLY OF SERVICES

2.1 ClubWizard Ltd will provide the Services to the Client from the Commencement Date and for the duration of the Agreement in subject to and in accordance with the provisions of this Agreement.

2.2 ClubWizard Ltd will provide the Services in accordance with the Service Level.

### 2.3 EXCLUDED SERVICES

2.4 Unless otherwise agreed in writing by ClubWizard Ltd (including within this Agreement) the Services do not include services relating to or required as a result of any of the following and ClubWizard Ltd shall be entitled to make additional charges for any such services in accordance with its standard charging rates from time to time in force:

2.5 the maintenance, repair, substitution or replacement of any Hardware;

2.6 support in respect of any Third Party Software Application;

2.7 the addition of any hardware or software to the Operating System without ClubWizard Ltd's agreement in writing for such hardware or software to be added to the Client IT Equipment;

2.8 failure of the Client to maintain the necessary environmental conditions for the operation of the Operating System;

2.9 failure of the Client to comply with ClubWizard Ltd's reasonable recommendations relating to the use of the Operating System;

2.10 any support or maintenance undertaken to the Operating System by persons not authorised or approved by ClubWizard Ltd;

2.11 act of God, fire, flood, war, act of violence, or any other similar occurrence;

2.12 failure of any toner cartridges, fuser units, print heads or other consumables;

2.13 failure or refusal to by the Client to allow ClubWizard Ltd personnel full access to the Equipment;

2.14 all insurable cases of damage;

2.15 damage to mouse and keyboard are excluded from this Agreement;

2.16 the provision of services other than at the Premises (or such other location as Club Wizard Ltd shall have approved in writing);

2.17 electrical or other environmental work external to the Equipment;

2.18 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment.

2.19 improper installation to the Operation System by the Client or any third party of any hardware or software; or

2.20 notwithstanding the terms of this Agreement, the provision of any Services on Christmas Day, Boxing Day and New Years Day.

### 3 TERM

3.1 Subject to clause 15 the Agreement shall be for the Initial Term.

3.2 Subject to clause 15 following the expiry of the Initial Term the Agreement shall continue unless and until terminated in accordance with clause 16.

### 4 DISASTER RECOVERY

4.1 Subject to ClubWizard Ltd approving the Disaster Recovery Plan in writing ClubWizard Ltd shall use its reasonable endeavours to implement the Disaster Recovery Plan in the event of a Disaster in respect of any of the Services.

4.2 The Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall be the service levels which are reasonably achievable in the circumstances.

4.3 The Disaster Recovery Plan shall not be deemed to have been approved by ClubWizard Ltd unless and until all recommendations made by ClubWizard Ltd in respect of the Disaster Recovery Plan have been complied with in full by the Client.

#### **5 USE OF SITE, OPERATING SYSTEM, CLIENT IT EQUIPMENT, THIRD PARTY PRODUCTS, CONTRACTS AND CLIENT'S STAFF**

5.1 The Client shall provide all persons authorised by ClubWizard Ltd with full, safe and uninterrupted access including remote access to the Site, the Operating System and the Client IT Equipment as may reasonably be required for the purpose of performing the Services. Where the Services are to be performed at the Site the Client shall provide adequate working space and office (including telephone) facilities for use by ClubWizard Ltd's personnel and take reasonable care to ensure their safety.

5.2 The Client grants to ClubWizard Ltd, with effect from the Commencement Date for the duration of the Agreement, a non-exclusive royalty-free licence to use, operate, copy and modify any Intellectual Property owned by the Client for the purpose only of fulfilling ClubWizard Ltd's obligations under the Agreement.

5.3 The parties shall co-operate to obtain the consents of third parties to the use by ClubWizard Ltd of any Third Party Software Application, documentation products and other materials ("Third Party Products") (including, without limitation, software and know-how) which:

5.3.1 the Client is permitted to use; and

5.3.2 is required by ClubWizard Ltd for the provision of the Services.

5.4 If the Client fails to obtain any consent under clause 6.3 or if the Client determines that the cost of obtaining such consent is unreasonable, the parties shall co-operate to agree alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained.

5.5 The Client shall maintain in force all current software maintenance agreements with the vendors of supported Third Party Software Applications used by the Client to ensure adequate assistance from such vendors if required.

5.6 The Client shall ensure that all personnel assigned by it to provide assistance to ClubWizard Ltd shall have the requisite skill, qualifications and experience to perform the tasks assigned to them.

#### **6 ADDITIONAL CLIENT OBLIGATIONS**

6.1 The Client shall ensure that appropriate environmental conditions are maintained for the Client IT Equipment and shall take all reasonable steps to ensure that the Operating System and the Client IT Equipment is operated in a proper manner by the Client's employees.

6.2 The Client shall nominate an Authorised Representative to be available to liaise with, and respond to queries from, ClubWizard Ltd's Authorised Representative (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

6.3 The Client shall:

6.3.1 co-operate with ClubWizard Ltd in performing the Services and provide any assistance or information as may reasonably be required by ClubWizard Ltd;

6.3.2 report faults promptly to ClubWizard Ltd; and

6.3.3 carry out a back-up operation on a daily basis and keep full back-up copies of all of its data;

6.3.4 maintain adequate and up to date anti-virus software on the IT Equipment at all times.

6.4 The Client warrants that:

6.4.1 it is the owner of the Client IT Equipment or is authorised by the owners of the Client IT Equipment to make it available to ClubWizard Ltd;

6.4.2 the details of the Client IT Equipment given to ClubWizard Ltd are complete and accurate; and

6.4.3 that all data and other information provided by it to ClubWizard Ltd is not obscene, defamatory or likely to result in any claim being made against ClubWizard Ltd by any third party.

6.5 The Client shall indemnify ClubWizard Ltd against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against ClubWizard Ltd as a result of the Client's failure to adhere to this Agreement.

6.6 The Client shall at its own expense execute all documents and do all acts and things reasonably required by ClubWizard Ltd to give effect to the terms of this Agreement and shall provide access to all information and documentation which is within its possession which is reasonably required by ClubWizard Ltd to enable it to fulfil its obligations.

#### **7 SERVICE CHARGES AND PAYMENTS**

7.1 In consideration of the provision of the Services by ClubWizard Ltd the Client shall pay to ClubWizard Ltd the Service Charge.

7.2 The Service Charge shall be paid by direct debit to the account of ClubWizard Ltd notified to the Client from time to time.

7.3 The Service Charge and any other payments to be made by the Client under these Terms & Conditions are stated exclusive of VAT which shall be paid by the Client at the rate and from time to time in the manner prescribed by law.

7.4 ClubWizard Ltd shall be entitled to increase the Service Charge in accordance with the Retail Prices Index at any time by notice in writing following the expiry of the Initial Term but not more than once in any consecutive period of 12 months.

7.5 ClubWizard Ltd reserves the right to increase the Service Charge at any time by notice in writing to the Client to reflect any increase in the cost of providing the Services which is due to an act or omission of the Client including but not limited to any change in the date for the performance of the Services or any delay caused by any instructions of the Client or failure by the Client to give ClubWizard Ltd adequate information or instructions.

7.6 If the Client fails to make any payment due to ClubWizard Ltd on the due date for payment, ClubWizard Ltd reserves the right to:

7.6.1 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

7.6.2 suspend performance of the Services until all sums due to ClubWizard Ltd have been paid in full (but only after having given written notice of intention to do so).

7.7 The Service Charge is exclusive of ClubWizard Ltd's expenses incurred in connection with the provision of the Services and any additional service charges which be charged at the ClubWizard Ltd's standard rates as set out in this initial agreement or with notice in writing and shall be payable by the Client in advance or if credit terms are offered by ClubWizard Ltd to the Client within thirty days of the date of ClubWizard Ltd's invoice.

7.8 All payments payable to ClubWizard Ltd pursuant to this Agreement shall be paid without any deduction whether by way of set-off, counter-claim, discount, abatement or otherwise unless the Client has a

valid court order requiring an amount equal to such deduction to be paid by ClubWizard Ltd to the Client.

7.9 Time for payment of all sums due to ClubWizard Ltd pursuant to this Agreement shall be of the essence.

7.10 We require payment to terms. Payment must be made on time, in full, and without any deduction, set off or counterclaim. In the event that an account is outstanding, we will refer the matter to our debt

collection agents, which will incur a surcharge of 15% of the debt, plus VAT at the prevailing rate. You agree that you will be legally liable to pay us that surcharge, and that payment of the same can be enforced

against you in court. You also agree to pay interest at the relevant reference rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998, which interest is payable both after and before any

judgment of the court and continues to accrue.

## 8 CHANGE CONTROL

8.1 A Change Request shall become a Change Order when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the Authorised Representatives of both parties to signify their approval of the change

8.2 Change Requests may be originated either by the Client or by ClubWizard Ltd.

8.3 Where ClubWizard Ltd originates a Change Request it shall provide, with the Change Request, details of the impact which the proposed change will have upon the Services; any systems or operations of the Client which communicate with, or are otherwise affected by the Services; the Service Charge; and the other terms of this Agreement.

8.4 Where the Client originates a Change Request, ClubWizard Ltd shall provide the Client, within 21 days of receiving the Change Request, details of the impact which the proposed change will have upon the Services; any systems or operations of the Client which communicate with, or are otherwise affected by the Services; the Service Charge; and the other terms of this Agreement.

8.5 Save where otherwise stated in this Agreement, neither party shall be obliged to agree a Change Request originated by the other.

8.6 The costs of implementing a Change Order shall be borne as set out in the Change Order.

8.7 ClubWizard Ltd shall be entitled to charge the Client for work undertaken by ClubWizard Ltd in analysing the effect of any proposed Change Request. Where ClubWizard Ltd wishes to make a charge for carrying out such analysis, it will first notify the Client in writing, in order to allow the Client to choose whether or not to authorise ClubWizard Ltd to proceed with the analysis of the requested change.

8.8 ClubWizard Ltd reserves the right at any time without notifying the Client to make changes to any Services which are necessary to comply with any applicable safety or other statutory requirement provided that such variation does not materially affect the quality or performance anticipated by the Client.

## 9 ASSIGNMENTS AND SUB-CONTRACTING

9.1 The Client shall not be entitled to give, bargain, sell, assign, let or otherwise dispose of its rights and obligations under this Agreement without the prior written consent of ClubWizard Ltd.

9.2 ClubWizard Ltd may assign the whole or any part of its obligations under this Agreement.

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 In the absence of prior written agreement to the contrary, all Intellectual Property created by ClubWizard Ltd or any employee, agent or sub-contractor of ClubWizard Ltd in the course of performing the Services shall vest in ClubWizard Ltd.

10.2 Where, in connection with the provision of the Services, the Client uses any Intellectual Property which is owned by ClubWizard Ltd, ClubWizard Ltd shall grant to the Client, or shall procure that the Client is granted (without charge to the Client and for the benefit of the Client) an indefinite non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any person providing services to the Client to use, adapt, maintain and support such Intellectual Property for the benefit of the Client.

10.3 In the absence of prior written agreement to the contrary, all Intellectual Property in the Client IT Equipment and any other information, materials or assets supplied to ClubWizard Ltd by the Client shall remain vested in the Client or its third party licensors. The Client shall grant or shall procure the grant of a licence to ClubWizard Ltd to utilise the Client IT Equipment or such other information, materials or assets to the extent required for the provision of the Services.

10.4 Unless stated expressly in writing in this Agreement, neither party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement.

10.5 The Client shall defend any claim (at the Client's expense) brought against ClubWizard Ltd alleging that the use of Client IT Equipment infringes the Intellectual Property of a third party including infringement of rights which arise as a result of storage or processing of any Client IT Equipment on ClubWizard Ltd's systems and/or the provision of any information, materials or other assets to ClubWizard Ltd by the Client (an "IPR Claim"). The Client shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that ClubWizard Ltd:

10.5.1 furnishes the Client with prompt written notice of the IPR Claim;

10.5.2 provides the Client with reasonable assistance in respect of the IPR Claim;

10.5.3 gives the Client the sole authority to defend or settle the IPR Claim.

10.6 ClubWizard Ltd shall defend any claim (at ClubWizard Ltd's expense) brought against the Client alleging that the provision of the Services or the use of any deliverables provided by ClubWizard Ltd infringes the Intellectual Property of a third party (an "IPR Claim"). ClubWizard Ltd shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that the Client:

10.6.1 furnishes ClubWizard Ltd with prompt written notice of the IPR Claim;

10.6.2 provides ClubWizard Ltd with reasonable assistance in respect of the IPR Claim;

10.6.3 gives ClubWizard Ltd the sole authority to defend or settle the IPR Claim.

## 11 CONFIDENTIALITY

11.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential supplied by ClubWizard Ltd or the Client (in this Agreement collectively referred to as the "Information") with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

11.2 Neither party shall without the prior written consent of the other party divulge any part of the other party's Information to any person except:

11.2.1 to their own employees, consultants or sub-contractors and then only to those employees, consultants or sub-contractors who need to know the Information for the purposes of this Agreement; and

11.2.2 to either party's auditors, the Inland Revenue, HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation.

11.3 Both parties undertake to ensure that persons and bodies referred to in clause 11.2 are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the other party.

11.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

11.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

11.6 Provided that it is not in breach of the confidentiality obligations set out above, ClubWizard Ltd may refer to and publicise its involvement with the Client, but only with the Client's prior written approval in relation to each publication, which shall not be unreasonably withheld or delayed.

## 12 FORCE MAJEURE

12.1 Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party (an event of "Force Majeure"). In the event that a Force Majeure event continues for a continuous period of more than 60 days, either party may terminate this Agreement by written notice to the other party.

## 13 LIMITATION OF LIABILITY

13.1 ClubWizard Ltd shall not be liable to the Client or be deemed to be in breach of its warranties or obligations under any provision in this Agreement:

13.1.1 for any delay in performing or failure to perform ClubWizard Ltd's obligations to the extent that such delay or failure was due to a failure by the Client to perform its obligations under this Agreement or if delay results from a failure by the Client to comply with reasonable requests by ClubWizard Ltd for instructions information or action required by it to perform its obligations within a reasonable time limit; or

13.1.2 for the consequences of any acts or omissions of the Client, its employees or agents or other third party suppliers or manufacturers engaged by or on behalf of the Client (other than third party sub-contractors or suppliers selected by ClubWizard Ltd); or

13.1.3 if the Client is in default of any of its payment obligations under this Agreement.

13.2 Save in respect of claims for death or personal injury arising from ClubWizard Ltd's negligence, in no event will ClubWizard Ltd be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of ClubWizard Ltd whether such damages were reasonably foreseeable or actually foreseen.

13.3 Save in respect of claims for malicious damage, and with reference to clause 6.3.4 The Client will not be liable for damage caused to third party network infrastructure as a result of a computer virus transmitted to the third party network infrastructure from The Client, via ClubWizard Ltd.

13.4 Except as provided above in the case of personal injury, death, and damage to tangible property, ClubWizard Ltd's maximum liability to the Client under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to a sum equivalent to the price paid to ClubWizard Ltd under this Agreement for the Services that are the subject of the Client's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Client in obtaining alternative services.

13.5 The parties acknowledge and agree that the limitations contained in this clause are reasonable in the light of all the circumstances.

13.6 The Client's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, "ClubWizard Ltd" includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

## 14 TERMINATION FOR CAUSE

14.1 This Agreement may be terminated for cause in whole by either party in the following circumstances:

14.1.1 by either party with immediate effect from service on the other of written notice if the other party is in breach of any material obligation under these Terms & Conditions and, if the breach is capable of remedy, that party has failed to remedy such breach within 28 Business Days of receipt of notice so to do;

14.1.2 by either party with immediate effect from the date of service on the other of written notice if a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the other's property or Client IT Equipment;

14.1.3 by either party with immediate effect from the date of service on the other party of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom.

## 15 TERMINATION WITHOUT CAUSE

15.1 After the expiry of the Initial Term either party may terminate this Agreement at any time by giving one complete calendar month's written notice to the other.

## 16 CONSEQUENCES OF TERMINATION

16.1 If this Agreement is terminated in whole or in part for any reason ClubWizard Ltd shall subject to payment of its reasonable fees use all reasonable endeavours to co-operate fully with the Client to ensure an orderly migration of the Services to the Client or, at the Client's request, a new service provider.

## 17 NON-SOLICITATION

17.1 The Client shall not (except with the prior written consent of ClubWizard Ltd) during the term of this Agreement and for a period of twelve months thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of ClubWizard Ltd.

## 18 WAIVER

18.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

## 19 ACCUMULATION OF REMEDIES

19.1 Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity by statute or otherwise.

## 20 SEVERABILITY

20.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## 21 PARTNERSHIP OR AGENCY

21.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

## 22 AMENDMENTS

22.1 This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

**23 ENTIRE AGREEMENT**

23.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

**24 COUNTERPARTS**

24.1 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.