



This Agreement between the Client and SupportWizard incorporates all of the terms and conditions stated on all Quotes, which contain the Service description(s), pricing, payment terms and other arrangements specific to the Client's contract with SupportWizard, any Service Level Agreement, the Standard Terms and any Third Party Terms and/or Change Orders. Signature of a Quote on behalf of a Client forms a legally binding contract made up of that Quote, any Service Level Agreement, the Standard Terms, any Third Party Terms and Change Orders (together referred to as the "**Agreement**").

## SUPPORTWIZARD - STANDARD TERMS

### 1 INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions.

<b>Applicable Data Protection Laws</b>	all laws and regulations applicable to the processing of personal data under this Agreement, including the UK Data Protection Act 2018, the UK GDPR (as defined in the UK Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (and the terms "controller", "data subject", "process" and "processor" shall be given the meaning set out therein)
<b>Applicable Laws</b>	all applicable laws, statutes and regulations from time to time in force
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
<b>Business Hours</b>	the period from 0900 to 1830 on any Business Day
<b>Change Order</b>	the meaning given to it in clause 9.1
<b>Charges</b>	the sums payable by the Client for the Services, as set out in the Quote and such other amounts as may be agreed between the parties in writing from time to time
<b>Client</b>	the entity or individual identified as such in the Quote



<b>Client Materials</b>	all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to SupportWizard in connection with the Services, including the items provided pursuant to clause 4.1.4
<b>Commencement Date</b>	the date stated as such in the Quote
<b>Deliverables</b>	any output of the Services to be provided by SupportWizard to the Client as specified in a Quote and any other documents, products and materials provided by SupportWizard to the Client in relation to the Services (excluding SupportWizard's Equipment and excluding Hardware)
<b>Excluded Services</b>	has the meaning given to it in clause 8
<b>Hardware</b>	items of hardware or other physical items (excluding media such as CD Roms that are merely used to deliver software) that are procured by SupportWizard for the Client and under which title passes to the Client under Third Party Terms or otherwise
<b>Intellectual Property Rights or IPR</b>	patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
<b>Operating System</b>	the operating software found on the Client's Equipment (if relevant)



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|--------------------------------|---|
| <b>Quote</b>                   | a written order, in the form provided by SupportWizard, accepted by or on behalf of the Client for the purchase of the Services (Client acceptance means Client's signature of the Quote (including electronic) or performance of any other act consistent with performance under this Agreement by the Client) |
| <b>Services</b>                | the services and Hardware as set out in a Quote and does not include the Excluded Services  |
| <b>SLA</b>                     | the service level agreement in Schedule 1   |
| <b>Standard Terms</b>          | these standard terms  |
| <b>SupportWizard</b>           | SupportWizard, a division of ClubWizard Limited a company incorporated in England with company number 04431215 and whose registered office is at 925 Finchley Road, London, England, NW11 7PE   |
| <b>SupportWizard Equipment</b> | any equipment, including tools, systems, cabling or facilities, provided by SupportWizard to the Client and used directly or indirectly in the supply of the Services including any such items specified in a Quote but excluding any Hardware  |
| <b>Term</b>                    | the term of this Agreement as set out in the Quote, subject to earlier termination in accordance with clause 16   |
| <b>Third Party Terms</b>       | the terms and conditions under which goods and/or services are provided by a company or individual that is not party to this Agreement. Such terms may be obtained from SupportWizard on request  |
| <b>VAT</b>                     | value added tax chargeable under the Value Added Tax Act 1994.  |
- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.



- 1.5 A reference to writing or written includes email.
- 1.6 Any words following the terms **including, include, in particular, for example** or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

## 2 **TERM**

- 2.1 This Agreement shall come into effect on the Commencement Date and shall continue for the Term.
- 2.2 The provisions of this Agreement will apply in respect of its subject matter to the exclusion of any other terms and conditions contained or referred to in any order, purchase order, acknowledgement of order, letter, form or other communication sent by the Client to SupportWizard.

## 3 **SUPPORTWIZARD'S RESPONSIBILITIES**

- 3.1 SupportWizard shall use reasonable endeavours to provide the Services and deliver the Deliverables to the Client, in accordance with this Agreement in all material respects.
- 3.2 SupportWizard shall use reasonable endeavours to meet any performance dates or SLA specified but any such dates shall be estimates only and time for performance by SupportWizard shall at no time be of the essence.
- 3.3 SupportWizard shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Client's address and that have been communicated to it under clause 4.1.5, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

## 4 **CLIENT'S OBLIGATIONS**

- 4.1 The Client shall:
- 4.1.1 co-operate with SupportWizard in all matters relating to the Services;
  - 4.1.2 ensure that the Client contact named on the Front Sheet is available to assist SupportWizard when required;
  - 4.1.3 provide for SupportWizard, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's site, office accommodation, data and other facilities as required by SupportWizard to provide the Services;
  - 4.1.4 provide to SupportWizard in a timely manner all Client Materials, documents, information, items and materials in any form (whether owned by the Client



or third party) reasonably required by SupportWizard in connection with the Services and ensure that they are accurate and complete;

- 4.1.5 inform SupportWizard of all health and safety and security requirements that apply at the Client's address in which the Services will be provided;
  - 4.1.6 keep and maintain SupportWizard's Equipment in accordance with SupportWizard's instructions from time to time and not dispose of or use SupportWizard's Equipment other than in accordance with SupportWizard's written instructions or authorisation;
  - 4.1.7 report any faults in SupportWizard's Equipment to SupportWizard as soon as reasonably practicable;
  - 4.1.8 carry out a back-up operation on at least a monthly basis and keep full back-up copies of all data that relates to the Services or SupportWizard's Equipment; and
  - 4.1.9 maintain adequate and up to date anti-virus software on SupportWizard's Equipment at all time.
- 4.2 If SupportWizard's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, SupportWizard shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

## 5 **QUOTES AND ORDER PROCESS**

- 5.1 This Agreement will be formed when the Client has accepted a Quote by signing it, dating it and returning it to SupportWizard. Signing for the purposes of this agreement includes electronic signature. SupportWizard may specify a time limit for acceptance on a Quote in which case the Quote cannot be accepted after expiry of such time limit.
- 5.2 The Client may order additional Services and/or Hardware by requesting SupportWizard to supply a draft additional Quote. If the Client accepts the terms of the additional Quote it shall sign it and return it to SupportWizard. SupportWizard will have no obligation to accept any additional order.
- 5.3 If any Service is described as a "Third Party Service" in the relevant Quote, SupportWizard will pass onto the Client the benefit of any service levels and warranties provided by such third party provider, to the extent SupportWizard is permitted to do so under the terms of its agreement with the relevant third party provider. Notwithstanding any other provision of this Agreement, all other warranties and conditions in respect of such Services, whether express or implied are hereby excluded to the extent permitted by law. The Client acknowledges and accepts that



SupportWizard is not liable for any Third Party Service and shall not become liable for any acts, omissions or failures of any third party.

- 5.4 The purchase of certain Hardware and/or Services may be subject to additional, third party terms and the Client may be required to enter into separate agreements prescribed by a third party involved in providing those Services or accept Third Party Terms on a “back-to- back” basis. The Client’s use of such Services and receipt of such Hardware will be subject to any such Third Party Terms.
- 5.5 The Client acknowledges that such Third Party Terms may change from time to time and the identity of the provider of such services may also change. The Client acknowledges that it is responsible for reading and ensuring its compliance with the Third Party Terms. The Client agrees that in continuing to receive the services provided under such Third Party Terms the Client hereby agrees to be bound by such terms. The only way to reject such Third Party Terms shall be to cease using the relevant services.
- 5.6 Without prejudice to clause 5.4, the provisions of this Agreement will apply in respect of the subject matter of the relevant Quote to the exclusion of any other terms and conditions contained or referred to in any order, purchase order, acknowledgement of order, letter, form or other communication sent by the Client to SupportWizard.
- 5.7 Any delivery timescales for Deliverables, installation or commissioning of Hardware shall be indicative only and shall not form part of this contract. In all instances of goods or services being supplied by SupportWizard time shall not be of the essence.
- 5.8 In some cases, the Client may enter into an agreement or set of terms and conditions directly with a third party. Such agreements or arrangements shall be entirely separate from this Agreement and shall form no part of it. Accordingly, SupportWizard shall have no liability or obligation with respect to any such agreements or arrangements.

## 6 **HARDWARE**

- 6.1 If Client purchases any Hardware from SupportWizard as part of the Services, risk in the Hardware will pass to the Client on delivery of the Hardware; and title in the Hardware will pass to Client on payment to SupportWizard for the Hardware.
- 6.2 Until the Client has paid in full for any given Hardware, it will:
- 6.2.1 possess the Hardware on SupportWizard’s behalf;
  - 6.2.2 maintain the Hardware in a satisfactory condition; and
  - 6.2.3 keep the Hardware insured on SupportWizard’s behalf for its full price against all risks, to the reasonable satisfaction of SupportWizard.



6.3 If any of the events set out in clause 16 occur, SupportWizard (or SupportWizard's subcontractor or agent) may enter the relevant Client premises and repossess any Hardware to which it has retained title under clause 6.1. SupportWizard may thereafter resell such Hardware to a third party. This clause 6.3 shall survive termination of this Agreement and is without prejudice to any other rights or remedies of SupportWizard.

6.4 Client acknowledges that SupportWizard is not the manufacturer of the Hardware, and as such SupportWizard shall use reasonable endeavours to transfer to Client the benefit of any warranty or guarantee given by the manufacturer to SupportWizard, but otherwise SupportWizard gives no warranties or guarantees as to the Hardware.

*Break-fix Service*

6.5 Without prejudice to clause 6.4 above, in the event of any defective Hardware, the Client may request that SupportWizard repairs such defective Hardware, at the Client's cost. SupportWizard is not under any obligation to accept such a request but will consider such request in good faith, and if such a request is accepted by SupportWizard:

6.5.1 subject to clause 4.1.3, (at the Client's option):

(a) the Client will arrange for the Hardware to be delivered to SupportWizard's premises for an engineer to assess the Hardware (either on-site at SupportWizard's premises or off-site at the engineer's premises), charged on a time and materials basis at the Client's cost;

(b) SupportWizard will arrange for the Hardware to be delivered to SupportWizard's premises (at the Client's cost) for an engineer to assess the Hardware (either on-site at SupportWizard's premises or off-site at the engineer's premises), charged on a time and materials basis at the Client's cost;

(c) SupportWizard will arrange for its engineer to attend the Client's premises and assess the Hardware, charged on a time and materials basis at the Client's cost;

6.5.2 the engineer shall, in their absolute discretion acting reasonably, determine whether the Hardware is capable of repair;

6.5.3 SupportWizard shall notify the Client of the engineer's decision as soon as reasonably practicable together with the estimated timeframe and costs of repair if repair is possible ("**Break-fix Offer**");



- 6.5.4 if the Client accepts the Break-fix Offer (whether in writing, orally or through conduct) SupportWizard shall use reasonable endeavours to ensure the engineer repairs the defective Hardware within the estimate fix time; and
- 6.5.5 the Client shall pay the agreed repair costs (and assessment time under clause 6.5.1) in accordance with the terms of clause 10 of this Agreement.
- 6.6 The Client acknowledges and agrees that:
  - 6.6.1 notwithstanding the repair service detailed above, risk in the Hardware remains with the Client at all times;
  - 6.6.2 the Client is solely responsible for insuring the Hardware at all times (including any time the Hardware is in transit and at SupportWizard's or its engineer's premises);
  - 6.6.3 it is the Client's sole responsibility to ensure any repair services carried out by SupportWizard does not and/or will not void the warranty and accordingly, SupportWizard shall not be liable to the extent any warranty is so voided; and
  - 6.6.4 whilst SupportWizard will use reasonable endeavours to repair defective Hardware under this break fix service, the Hardware may not be capable of fixing. In such circumstances SupportWizard will notify the Client.

## 7 HOSTING

Where SupportWizard is providing hosting services as part of the Services, the following terms shall apply:

- 7.1 SupportWizard will create an account enabling the Client (and its employees, officers, agents and authorised subcontractors) to access and use the hosted services including both administrator and user accounts.
- 7.2 The Client must not (except to the extent expressly permitted by applicable law):
  - 7.2.1 sub-license the right to access the hosted services;
  - 7.2.2 permit any unauthorised person to access the hosted services;
  - 7.2.3 use the hosted services in any way that is unlawful, illegal, harmful or fraudulent or in connection with any such activity or in a way that causes or may cause impairment, damage or lack of availability of the hosted services for any third party; or
  - 7.2.4 make any alteration to SupportWizard's ICT and platform.





- 7.3 Each party will use reasonable endeavours to prevent malicious software from being introduced into other party's ICT environments, networks and systems. This will include deploying anti-virus software in accordance with good industry practice.
- 7.4 SupportWizard will implement appropriate security measures and firewalls where the same are part of the Services. Where SupportWizard hosts data under this Agreement, SupportWizard has no knowledge of the data or types of data it hosts. It is the Client's responsibility to ensure that the Services are appropriate for the type of data that SupportWizard hosts under the Agreement.
- 7.5 SupportWizard will use reasonable endeavours to maintain the availability of the hosted services, but cannot guarantee 100% availability (in particular, SupportWizard accepts no liability for downtime caused by events outside of its control, fault or failure of the internet or public telecommunications networks, breaches by the Client of this Agreement or scheduled maintenance).

## **8 EXCLUSIONS FROM THE SERVICES**

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

- 8.1 the maintenance, repair, substitution or replacement of any hardware that is not SupportWizard Equipment;
- 8.2 support in respect of any third party software;
- 8.3 the addition or improper installation of any software to the Client's Operating System without SupportWizard's agreement in writing for such software to be added;
- 8.4 failure of the Client to maintain the necessary environmental conditions for the operation of the Operating System;
- 8.5 failure of the Client to comply with SupportWizard's reasonable recommendations relating to the use of the Operating System;
- 8.6 any support or maintenance undertaken to the Operating System by persons not authorised or approved by SupportWizard;
- 8.7 failure of any toner cartridges, fuser units, print heads or other consumables;
- 8.8 failure or refusal by the Client to allow SupportWizard personnel full access to the Client's Equipment or SupportWizard Equipment;
- 8.9 all insurable cases of damage;
- 8.10 damage to a mouse or keyboard;



- 8.11 the provision of services other than at the Client's site (or such other location as SupportWizard shall have approved in advance and in writing);
- 8.12 electrical or other environmental work external to the Client's Equipment or SupportWizard Equipment;
- 8.13 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of, or fault in, the Client's Equipment or SupportWizard Equipment;
- 8.14 improper installation to the Operation System by the Client or any third party of any hardware or software;
- 8.15 services to be provided by third parties under agreements between the Client and the third party (for example, without limitation, for ePos or PDQ support services); and/or
- 8.16 the provision of any Services on Christmas Day, Boxing Day and New Year's Day (the "**Excluded Services**").

## 9 **CHANGE CONTROL**

- 9.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
  - 9.1.1 the Services;
  - 9.1.2 SupportWizard's existing charges;
  - 9.1.3 the timetable of the Services; and
  - 9.1.4 any of the terms of this Agreement.
- 9.2 If SupportWizard wishes to make a change to the Services it shall provide a draft Change Order to the Client.
- 9.3 If the Client wishes to make a change to the Services:
  - 9.3.1 it shall notify SupportWizard and provide as much detail as SupportWizard reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - 9.3.2 SupportWizard shall, as soon as reasonably practicable after receiving the information at clause 9.3.1, provide a draft Change Order to the Client.
- 9.4 If the parties agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement. If the parties are unable to agree a Change Order then there shall be no changes to the Services.



9.5 If a Change Order is agreed in accordance with the terms of this Agreement and incorporates additional Third Party Terms, such Third Party Terms will form part of this Agreement.

9.6 SupportWizard may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to clause 9.3 on a time and materials basis at SupportWizard's daily rates set out in a Quote.

## 10 **CHARGES AND PAYMENT**

10.1 In consideration of the provision of the Services by SupportWizard, the Client shall pay the Charges.

10.2 Where the Charges are calculated on a time and materials basis SupportWizard's standard daily fee rates as set out in the relevant Quote shall apply.

10.3 SupportWizard may increase the Charges on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

- 10.4 SupportWizard shall invoice the Client for the Charges as specified in the relevant Quote. If payments are to be made monthly, SupportWizard shall invoice the Client at the beginning of each month (for payment within 30 days) for Services to be performed during the following month.
- 10.5 In respect of services provided by SupportWizard pursuant to this Agreement (save as may be otherwise indicated in the relevant Quote), the Client shall set up a direct debit to pay each invoice submitted to it by SupportWizard on the first of each month (or the first Business Day immediately following) to a bank account nominated in writing by SupportWizard from time to time.
- 10.6 Without prejudice to any other right or remedy that it may have, if the Client fails to pay SupportWizard any sum due under this Agreement on the due date:
- 10.6.1 the Client shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and
- 10.6.2 SupportWizard may suspend all or part of the Services until payment has been made in full.
- 10.7 All sums payable to SupportWizard under this Agreement are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice.

## 11 **INTELLECTUAL PROPERTY RIGHTS**

- 11.1 In relation to the Deliverables:
- 11.1.1 SupportWizard and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Client Materials;
- 11.1.2 SupportWizard grants the Client, or shall procure the grant to the Client of, a worldwide, non-exclusive, royalty-free licence during the Term of this Agreement to copy and modify the Deliverables (excluding the Client Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- 11.1.3 the Client shall not sub-license, assign or otherwise transfer the rights granted in clause 11.1.2.
- 11.2 In relation to the Client Materials, the Client:
- 11.2.1 and its licensors shall retain ownership of all IPRs in the Client Materials; and

11.2.2 grants SupportWizard a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the Term of this Agreement for the purpose of providing the Services to the Client.

11.3 SupportWizard:

11.3.1 warrants that the receipt, use of the Services and the Deliverables by the Client shall not infringe any rights of third parties to the extent that infringement results from copying;

11.3.2 shall keep the Client indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Client as a result of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

11.3.3 shall not be in breach of the warranty at clause 11.3.1, and the Client shall have no claim under the indemnity at clause 11.3.2, to the extent the infringement arises from:

- (a) the use of the Client Materials in the development of, or the inclusion of the Client Materials in any Deliverable;
- (b) any use of the Services and/or Deliverables in breach of this Agreement;
- (c) any modification of the Deliverables or Services, other than by or on behalf of SupportWizard; and
- (d) compliance with the Client's specifications or instructions.

11.4 The Client:

11.4.1 warrants that the receipt and use of the Client Materials in the performance of this Agreement by SupportWizard, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

11.4.2 shall keep SupportWizard indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by SupportWizard as a result of or in connection with any claim brought against SupportWizard, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client Materials.

- 11.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 11, the Indemnified Party shall:
- 11.5.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.3.2 or clause 11.4.2 (as applicable), (**IPRs Claim**);
  - 11.5.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - 11.5.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
  - 11.5.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## 12 **CONFIDENTIALITY**

- 12.1 Each party undertakes that it shall not at any time during the Term, and for a period of five years after the Term, disclose to any person (or permit the disclosure of) any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 13 **AUDIT**

During normal business hours, the Client shall permit SupportWizard or SupportWizard's representatives access to the Client's premises and to any relevant

records kept in connection with this Agreement and Client will comply with all reasonable requests or directions of SupportWizard or its representatives to enable SupportWizard to verify and/or procure that Client is in full compliance with its obligations under this Agreement. SupportWizard or SupportWizard's representative will be required to adhere to any applicable Client premises and security policies in the performance of such an audit or inspection.

## 14 DATA PROTECTION

14.1 During the course of providing the Services, SupportWizard may be required to process personal data for which Client is the controller. SupportWizard shall be the processor of any such data provided by (or to which access is granted by) the Client. SupportWizard shall, and shall procure that any of its sub-processors it delegates to shall, at all times:

14.1.1 only process the personal data as may reasonably be required for the purpose of:

- (a) performing its obligations under this Agreement; and
- (b) otherwise complying with an obligation under this Agreement or under any Applicable Data Protection Laws;

14.1.2 use reasonable endeavours to procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

14.1.3 have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the personal data to be protected;

14.1.4 reasonably assist Client, at Client's expense, in responding to any request from a data subject and in ensuring compliance with Client's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, SupportWizard shall notify Client if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Client personal data;

14.1.5 notify Client without undue delay after becoming aware of a personal data breach; and

14.1.6 at the written direction of Client, delete or return to Client all Client personal data on termination of this Agreement, unless SupportWizard is required by Applicable Data Protection Laws to continue to process that personal data

or has a reasonable need to retain such data as part of historic records pertaining to normal business operations.

- 14.2 Client hereby provides its prior, general authorisation for SupportWizard to:
- 14.2.1 continue to use the relevant third-party service providers appointed as at the Commencement Date to provide the relevant services in substantially the same manner as they were provided prior to the Commencement Date;
  - 14.2.2 appoint other processors to process the Client personal data, provided that SupportWizard shall use reasonable endeavours to procure that the terms on which it appoints such processors comply with Applicable Data Protection Laws; and
  - 14.2.3 transfer Client personal data outside of the UK as required for the purposes set out in this Agreement, provided that SupportWizard shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws.
- 14.3 The Client warrants, represents and undertakes that it has (or will acquire) consent and/or another valid legal basis on which to process personal data as described in this clause 14.

## 15 **LIMITATION OF LIABILITY**

- 15.1 Nothing in this Agreement shall limit or exclude SupportWizard's liability for:
- 15.1.1 death or personal injury caused by its negligence; or
  - 15.1.2 fraud or fraudulent misrepresentation.
- 15.2 Subject to clause 15.1, SupportWizard shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; loss of use or corruption of software, data or information; and any indirect or consequential loss.
- 15.3 As part of the Services, SupportWizard may from time to time provide ad hoc advice, assistance and troubleshooting counsel in connection with PDQs and/or ePos' which are subject to support pursuant to a contract between the Client and a third party. Nothing in this Agreement shall replace advice obtained directly from such third parties and SupportWizard expressly excludes liability in connection with such support. Such support from SupportWizard is provided on an "as is" basis with no warranties or guarantees whatsoever.
- 15.4 Subject to clause 15.1 and 15.2, SupportWizard's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the Charges paid by the Client under this Agreement in the 12 months preceding the claim.



- 15.5 Save as expressly stated herein, all warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.
- 15.6 It is the Client's responsibility to obtain and maintain insurance including professional indemnity, cyber-risk and data loss insurance in respect of the provision of Services by SupportWizard.

## 16 **TERMINATION**

- 16.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 16.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so; or
  - 16.1.2 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.2 Without affecting any other right or remedy available to it, SupportWizard may terminate this Agreement with immediate effect by giving written notice to the Client if:
- 16.2.1 the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
  - 16.2.2 there is a change of control of the Client.

## 17 **CONSEQUENCES OF TERMINATION**

- 17.1 On termination or expiry of this Agreement:
- 17.1.1 the Client shall immediately pay to SupportWizard all of SupportWizard's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, SupportWizard may submit an invoice, which shall be payable immediately on receipt;
  - 17.1.2 the Client shall immediately return all of the SupportWizard Equipment. If the Client fails to do so, then SupportWizard may enter the Client's site and take possession of the SupportWizard Equipment. Until they have been returned or
  - 17.1.3 repossessed, the Client shall be solely responsible for the safe keeping of the SupportWizard Equipment;
  - 17.1.4 SupportWizard shall on request return any of the Client Materials not used up in the provision of the Services; and
  - 17.1.5 clauses 1, 10, 11, 12, 13, 15, 17 and 18 shall continue in force.

17.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 18 GENERAL

18.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 5 days' written notice to the affected party.

18.2 The Client shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement. SupportWizard may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

18.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.4 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

18.5 This Agreement will not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative each party.

18.6 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.7 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.8 This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this Agreement.

18.9 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales whose courts shall have exclusive jurisdiction.

**SCHEDULE 1  
SERVICE LEVEL AGREEMENT**

**Not applicable to PAYG services.**

**IT Support Requests during Business Hours**

<b>Priority Level</b>	<b>Issue</b>	<b>Fix</b>
Priority 1	Entire system unavailable.	Begin fix within 15 minutes.
Priority 2	Business critical system unavailable for individual users.	Begin fix within 2 hours.
Priority 3	Intermittent problems for individual users.	Begin fix within 8 hours.