

## **Rosslyn Data Technologies Support Agreement (Terms and Conditions)**

### **Reference Rosslyn Data Technologies SUP-V007**

Support Services provided by Rosslyn Data Technologies, are subject to these “Support Agreement” terms and conditions, (hereinafter referred to as “Agreement”),

This Agreement and its attachments are the complete Agreement and replace any prior oral or written communications between us.

Each Agreement takes effect on written confirmation, which can include the original signed Agreement, or include facsimile or emails, of the transaction details.

Any reproduction of this Agreement, an Attachment or Transaction Document made by reliable means (for example, photocopy, or facsimile, or scanned document) is considered an original and all Products and Services you order under this Agreement are subject to it.

These terms and conditions apply to all Rosslyn Data Technologies Support Contracts, and contain the following Terms and Conditions.

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## 1) Definitions

In this Agreement the following expressions shall, unless the context requires otherwise, have the following meanings:

- a) Customer means Customer as identified in the Support Services Agreement.
- b) Fault or Problem means a defect, which relates to a software malfunction, which is contrary to the functional requirements specification.
- c) Services means those Support Services provided by Rosslyn Data Technologies to the Customer on the terms and conditions of this Agreement and pursuant to the Support Agreement scope of work,
- d) Site means the locations where the software, hardware, or solution is installed.
- e) Software means any software listed in the Support Services Agreement.
- f) The Support Services Agreement 'Agreement' means this Agreement and any relevant Support Service Agreement, Statements of Work, and other attachments or appendices specifically referenced in this Agreement.

## 2) Proprietary Nature of this Agreement

Rosslyn Data Technologies prepares each customer Agreement for the Customer organisation's exclusive use. Each Agreement is protected by copyright. The Customer may make Rosslyn Data Technologies Agreements, or parts of them, available to other organisations only with the written approval of the Rosslyn Data Technologies office issuing the document. This Agreement supersedes all previous agreements and understandings between the parties on this subject whether in writing or oral.

## 3) Terms of Agreement

This Agreement commences on the date signed by both parties, and will continue for 12 months after which this agreement can be renewed annually with written approval of both parties. This Agreement will remain in force until terminated by the Customer giving at least 90 day 's written notice of termination to Rosslyn Data Technologies at any time or by Rosslyn Data Technologies giving not less than 90 days' written notice of termination to the Customer at any time after the initial period of 12 months.

## 4) Price Quotations

All prices quoted are for the Customers information only. Prices for Support Services sold by Rosslyn Data Technologies will be those as stated in this Agreement. Receipt by the Customer of an order for Support Services automatically confirms your acceptance to this Rosslyn Data Technologies agreement. Prices will be subject to the terms and conditions of this Agreement. All prices quoted are exclusive of local country taxes.

## 5) Support Obligations and Error Correction Services

During the period of this Agreement Rosslyn Data Technologies shall provide Services for the Customer comprising support and fault determination during normal business hours of 8.30 a.m. to 5.30 p.m. Mondays to Friday inclusive but excluding Bank and Public Holidays.

Rosslyn Data Technologies agrees that the right to determine when to attend a site will be at the final discretion of the Customer, but in the event of site attendance the Customer shall be charged the hourly rate appearing in the Support Agreement, contract or Scope of Work, plus expenses.

Rosslyn Data Technologies reserves the right to refuse to provide support for technical faults if the reason for the faults occurring is an incorrect use of the system or some other external factor including incorrect installation. Under such circumstances Rosslyn Data Technologies and the Customer can negotiate a separate scope of work to remedy the fault or cause.

## 6) Payment and Charges

The Customer will be responsible for payment of all charges detailed in the Support Agreement,

The Customer will settle invoices within 30 days from the date of receipt of a valid invoice. If the Customer fails to pay any sum due then Rosslyn Data Technologies shall be entitled to interest on the amount due at the rate of 4% per annum above Bank of England base rate ruling from time to time calculated from the date due and to recover all costs including reasonable expenses, legal fees and the cost of collection. In the event that the Customer fails to pay any undisputed sum due within 30 days of the due date for payment under this Agreement Rosslyn Data Technologies may, with immediate effect, suspend performance under this Agreement.

## 7) Warranty and Disclaimer of Warranty

Rosslyn Data Technologies shall perform its obligations in a professional manner in accordance with generally recognised commercial practices and standards and with reasonable skill and care and within a reasonable time and rate for such services.

Except as specifically set forth herein all express or implied representations and warranties, including any implied warranty of satisfactory quality or fitness for a particular purpose are hereby disclaimed. Without limitation to the foregoing Rosslyn Data Technologies expressly does not warranty that the operation of the Customer's business will be uninterrupted or that the software will be error free.

## 8) The Customers Obligations

Throughout the term of the Agreement the Customer shall:

- a) Have in place any necessary valid and current server and user licenses,
- b) Provide access to relevant information, records and other material related to the software subject.
- c) Make available such working space and facilities at their premises as Rosslyn Data Technologies may reasonably require in relation to the performance of Services.
- d) Make available and fund, facilities for remote diagnostics and support including communication links.
- e) Provide any reasonable assistance for Rosslyn Data Technologies to diagnose and rectify Faults.
- f) Employ adequate safety precautions.
- g) Use the Software correctly and in accordance with the operator instructions and related documentation.
- h) Maintain procedures to facilitate reconstruction of any lost or altered files, data or programs to the extent deemed necessary by Rosslyn Data Technologies. The Customer agrees that Rosslyn Data Technologies will not be liable under any circumstances for any consequences arising from lost or corrupted data, files or programs. The Customer is solely responsible for carrying out all necessary backup procedures for their own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason.
- i) Be solely responsible for the security of its confidential and proprietary information, and not disclose such information to Rosslyn Data Technologies except on a need to know basis for the purposes of Rosslyn Data Technologies' performance of the Service.

- j) Control the environmental conditions of the Site in accordance with any environmental operating ranges specified by Rosslyn Data Technologies or other supplier of hardware or software.
- k) Provide ready access to a telephone at the Site on which external calls connected with the Services can be made and received by Rosslyn Data Technologies' personnel.
- l) Not make any modification or addition to the software.
- m) Establish/operate internal procedures to prevent occurrence of avoidable problems.

## 9) Indemnities and Limits of Liability

Rosslyn Data Technologies will indemnify the Customer for direct physical injury or death caused solely by the negligence of its employees acting within the course of their employment and the scope of their authority.

Except as expressly stated in this Agreement Rosslyn Data Technologies disclaims all liability to the Customer in connection with Rosslyn Data Technologies' performance of this Agreement or the Customer's use of the software and in no event will Rosslyn Data Technologies be liable to the Customer for physical injury or death damage to real property or for special, indirect or consequential damages or damages by virtue of the negligence of its employees or howsoever arising including but not limited to loss of profits or arising from loss of data or unfitness for user purposes.

The Customer will indemnify and defend Rosslyn Data Technologies and its employees in respect of any third party claims which arise from any Rosslyn Data Technologies performance carried out on the instructions of the Customer or its employees.

The Customer will indemnify Rosslyn Data Technologies in respect of any losses or expenses incurred by Rosslyn Data Technologies as a result of the Customer's failure to maintain adequate current licences.

## 10) Personnel

The Customer shall not (and its respective Group), shall not solicit or approach in any way, any of Rosslyn Data Technologies' employees or contractors connected with provision or receipt of Services and or Support or managing the parties' relationship hereunder, with a view to offering such employees or contractors employment or to solicit services from them on their own account (whether for themselves or for another party) during the Term and for the period of one (1) year after the termination or expiry of this Agreement.

If any employee or contractor of Rosslyn Data Technologies leaves the employment as a result of a breach by the Customer (the "Poaching Party"), and thereafter (and always within a further period of one (1) year) that leaving employee commences employment with, or provides services to that Poaching Party (or third party as was "introduced" by that Poaching Party), that Poaching Party shall pay (by way of liquidated damages, but in full and final settlement of any claim in connection herewith) the party losing or having lost their employee or contractor (and not being in breach), GBP (£) 100,000 (the "Sum"). Such Sum is hereby acknowledged by the parties to be a reasonable and genuine pre-estimate of the loss that will be suffered by Rosslyn Data Technologies, is not intended as a penalty, but is comparatively high because of the specialist nature of the business; that Sum reflecting inter alia, the cost of recruiting and training a replacement employee, together with the (minimum) likely impact (including loss of profit and/or business) that will be suffered by the party not in breach.

Notwithstanding the aforesaid, in the event that any court or other body of competent jurisdiction should, contrary to the parties' intention, deem such Sum to be such a penalty provision, such Sum will immediately be reduced to the maximum permitted by the relevant court or other body of competent jurisdiction (and to which is shall continue to give effect to).

## 11) Confidentiality

The Parties recognise that under this Agreement they may each receive trade secrets and confidential or proprietary information of the other party, including but not limited to information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests, source and object program codes and development plans.

All such information, which is either marked Confidential or stated at the time of disclosure and subsequently confirmed in writing to be confidential constitutes Confidential Information. Each party agrees not to divulge Confidential Information received from the other to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party. This obligation will survive the termination of this Agreement for a period of three years or until such earlier time as the Confidential Information concerned reaches the public domain other than through the receiving party's own default.

## 12) Termination for Cause

This Agreement may be terminated immediately by notice in writing:

By Rosslyn Data Technologies if the Customer fails to pay any sums due under this Agreement within 30 days of the due date for payment without prejudice to any other provisions relating to late payment in this Agreement.

By either Party if the other party is in material breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice by the other party.

By either Party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or equivalent circumstances occur in any other jurisdiction.

Any termination of this Agreement under this clause will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

## 13) Force Majeure

Neither party shall be liable for delay, non-performance, loss or damage due to acts of God, acts of government, wars, riots, civil unrest, strikes, accidents in transportation or other causes beyond the reasonable control of the parties. The foregoing shall not apply to the Customer's obligation to make payment.

## 14) Notices

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered post or facsimile to the last known address of the parties hereto. A notice sent by registered post or certified mail shall be deemed to have been received 48 hours after the time of posting.

**15) Invalid Provision**

Should any provision of this Agreement become illegal or void for any reason, the validity of the remaining provisions shall not be affected and the parties shall enter into negotiations in good faith to find a replacement for the provision, which is of similar economic effect to both parties.

**16) Modification**

No modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless confirmed in writing and duly executed by both parties.

**17) Non Waiver**

The failure of either party to give notice to the other of any breach or non-fulfilment of any provision, term or clause here of constitute a waiver of any other provision, term or clause hereof.

**18) Intellectual Property**

Any bespoke software (code) developed as a direct or indirect result of the tasks undertaken as part of this Agreement remain the property of Rosslyn Data Technologies and all intellectual rights reside solely with Rosslyn Data Technologies unless otherwise agreed.

**19) Assignment**

The Customer shall not assign or otherwise dispose of the Agreement or any part thereof or of the benefit or advantage of this Agreement or any part thereof without the previous consent in writing of Rosslyn Data Technologies.

**20) Validity Period**

This Rosslyn Data Technologies Agreement is valid for thirty days only from the header date of the proposal, unless otherwise stated.

**21) Third Parties**

If a third party carries out any of the Customers responsibilities, it is the Customers responsibility to evaluate, select, and negotiate the terms of agreement for such a third party. Rosslyn Data Technologies is not a party to such arrangements and therefore will not be responsible for the results achieved or the schedule of completion.

Your contractual relationship with Rosslyn Data Technologies will be governed only by the terms of this Agreement and is independent of and unaffected by any relationship you may establish with a third party. Rosslyn Data Technologies does not make any warranty, express or implied, as to the quality, completion, or fitness for intended purpose of non-Rosslyn Data Technologies products or services.

Rosslyn Data Technologies will not assume responsibility for any damages, which result if you fail to assume the Customer responsibilities, or from acts or omissions of non-Rosslyn Data Technologies firms or individuals.

## 22) Third-Party Programs

The Customer is responsible to obtain any necessary permission for the use or copying of non-Rosslyn Data Technologies program materials. If The Customer discloses such materials to Rosslyn Data Technologies or request or permit Rosslyn Data Technologies to copy or otherwise use them, the Customer warrants that they are entitled to do so and that they have the necessary consent to enable Rosslyn Data Technologies to copy or use the materials without infringing any third party's rights.

## 23) Responsibilities

Successful application, operation, and management of products and services are the responsibility of the user. Examples of these responsibilities are:

- a) Validating the proposed equipment and program,
- b) Developing appropriate systems procedures,
- c) Incorporating protective measures to safeguard the plans,
- d) Preparing adequate documentation,
- e) Providing qualified personnel to obtain desirable results,
- f) Ensuring proper system redundancy, backup and recovery,

In no event shall Rosslyn Data Technologies have any liability for consequential damages.

## 24) Recommendations, Analyses, and Estimates

Rosslyn Data Technologies proposals to the Customer include recommendations for the Customers use of products and services and may include related financial analyses and estimates of volumes, performance, costs, and savings. These recommendations, analyses, and estimates are based on information the Customer have given Rosslyn Data Technologies, our observations and assumptions, and public tariffs.

The Customers actual results against Rosslyn Data Technologies' recommendations, analyses, and estimates are the Customers responsibility to validate. The Customer should review them to determine their relevance to your business and make your own decisions from such input.

## 25) Geographic Scope

All your rights, all our obligations, and all licences (except for Licensed Internal Code and as specifically granted) are valid only in the United Kingdom.

## 26) Governing Law

The laws of the country in which Customer purchases Support Services govern this Agreement, including, except;

- 1) in Australia, the laws of the State or Territory in which the transaction is performed govern this Agreement; and
- 2) in the United Kingdom, all disputes relating to this Agreement will be governed by English Law and will be submitted to the exclusive jurisdiction of the English courts; and
- 3) in Canada, the laws in the Province of Ontario govern this Agreement; and
- 4) in the United States the laws of the State of Delaware govern this Agreement;

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.