



Patapsco Service and Support - Terms

DEFINITIONS

“Support” - means the support services to be provided by Patapsco to the Customer in respect of the Hardware and Software related thereto, by means of public telephone network and email during this document as set out in the attached Support Contract.

“Permitted Purpose” - means the use by the Customer of the Hardware and Software, (as identified in the Support Contract).

“Software” - means the machine readable forms of the software programs and related materials as detailed in the Support Contract.

“Hardware” – means the hardware detailed in the Support Contract.

”NWH” – normal Patapsco working hours; 08:30 to 17:00 Monday to Friday UK-time and excluding UK Public Holidays

1. DURATION

- i. Patapsco agrees to provide Support with effect from the Commencement Date set out in the Support Contract until the Support Expiry Date set out in the Support Contract unless terminated in accordance with Clause 11.

2. CHARGES

- i. Payment terms are in advance
- ii. If the Customer fails to make payment by the due date Patapsco may, without prejudice to any other rights or remedies it may have may cancel or suspend any further Support provided to the Customer under this or any other Agreement between the parties.
- iii. Any additional support required by the Customer can be included in this Agreement at any time and additional charges will be invoiced by Patapsco accordingly.

3. SUPPORT

- i. If Customers encounter a technical problem, Patapsco may at its discretion, insist the product is upgraded to the latest or a specified version of code.

4. SOFTWARE RELEASES

- i. Patapsco shall from time to time notify the Customer and make available to Customers with the appropriate Support Agreement any improved version of, or updates to, the Software that Patapsco shall release for both field equipment and DbManager features (Please note that not all software releases may be compatible with your current hardware)
- ii. The Customer shall inform Patapsco that they require the updated version and Patapsco shall email the software with relevant documentation.
- iii. The Customer shall load updated versions. The new release of the Software shall thereby become the current release of the Software and the provisions of this Agreement shall apply accordingly.
- iv. If the Customer requires a down-level version of Software on new equipment they shall notify Patapsco in writing accordingly.

5. EXCLUDED SUPPORT

Patapsco shall be under no obligation to provide Support in respect of:

- i. Problems resulting from any modifications of customisation of the Hardware or Software not authorised in writing by Patapsco
- ii. Any Customer software other than the Software provided by Patapsco.
- iii. Any fault in the Customer’s network or system other than Patapsco equipment or Software.
- iv. Any programs, computer hardware, operating systems or other supporting hardware or software used in conjunction with the Hardware or Software.
- v. Patapsco shall not be obliged to make modifications or provide support in relation to the Customer’s computer hardware, operating system software, or third party software or other equipment.
- vi. Telephone support will be not be given for questions covered by the current user manual.
- vii. Where the Customer is using non-standard cables.

6. LIMITATION OF LIABILITY

- i. Should Patapsco breach any of its responsibilities under this Agreement or should Patapsco in some manner be negligent, regardless of the form or theory of any legal or equitable action brought against Patapsco by the Customer, the Customer's sole remedy for such breach and recover shall be limited to general money damages (and no other relief) in a total amount not to exceed 100% of the amount due from the Customer to Patapsco under this Agreement for the equipment in question. This amount includes any and all claims combined, including any costs, and/or legal fees incurred by the Customer, and the forgoing shall constitute the Customer's exclusive remedy.
- ii. Under no circumstances shall Patapsco be liable for any loss of profits, loss of and/or corruption of data, special, economic or consequential losses, loss of business and/or business interruption even if Patapsco was advised of the possibility of such damages.
- iii. No action under this Agreement may be brought by the Customer once this Agreement has expired or for equipment/Software not included and current within the Schedule.

7. CUSTOMER'S OBLIGATIONS

- i. In order to effectively support the Customer, Patapsco requires the Customer to undertake the following:-
- ii. Operate the Hardware and Software, and maintain in accordance with Patapsco's instructions and any operating documentation provided.
- iii. Assist in resolving incidents by carrying out tasks requested by Patapsco's staff to aid resolution of the issue.
- iv. Test replacement Hardware or new Software and configurations to ensure the incident is resolved.
- v. Permit Patapsco to install the current version of Software from time to time when upgrades occur.
- vi. Provide a reasonable level of assistance in implementation and testing.
- vii. Ensure that staff operating the Hardware and Software has a reasonable level of proficiency.

8. TERMINATION

- i. Either party may terminate this Agreement on 60 days written notice to the other party.
- ii. Patapsco may immediately terminate this Agreement by written notice if the Customer fails to pay any sum due under this Agreement by the due date.

9. ENTIRE AGREEMENT

- i. This Agreement together with the Support Contract to it contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them. 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. Nothing in this Agreement shall exclude liability for any fraudulent statement made or act prior to the date of this Agreement.

10. VARIATION

- i. No purported variation of this Agreement shall take effect unless made in writing and signed by a Director of Patapsco and an authorised representative of the Customer.

11. WAIVER

- i. No course of dealing on the part of Patapsco, nor any failure on Patapsco's part to exercise any right shall operate as a waiver of such rights or otherwise prejudice Patapsco's rights, powers and remedies.

12. INVALIDITY

- i. If any of the provisions of this Agreement shall be construed to be invalid under the laws of England, such invalidity shall not invalidate any other provision of this Agreement. The remaining valid provisions of this Agreement shall continue in full effect and shall be binding on the parties to this Agreement.

13. CHOICE OF LAW

- i. This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

14. THIRD PARTIES

- i. All third party rights are excluded and no third party shall have any right to enforce this Agreement. Any right of a third party to enforce this Agreement may be varied and/or extinguished by agreement between the parties to the Agreement without the consent of such third party.

February 2010