

# Managed Services Terms and Conditions

## 1. DEFINITIONS

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

- 1.1 All Definitions within these Terms are in addition to the definitions within the **Standard Terms and Conditions**
- 1.2 "3rd Party" shall mean any business, person or entity outside and separate to Comcraft Software Limited that provides any service or product for use by the Customer
- 1.3 "Managed Services" means these Managed Services Terms and Conditions for the Provision of 3rd Party Services
- 1.4 "Specification Level" shall be the technical or virtual specification required to deliver any Managed Service from a 3rd Party that provides sufficient resources, capability and operational standard necessary to deliver a Solution
- 1.5 "Solution" shall mean a package of Services, Managed Services or collection of 3rd Party Service Packages as Ordered by the Customer
- 1.6 "Order" shall mean the schedule as defined in the Estimate form attached to this Agreement, which upon acceptance both parties shall, together with this Agreement, form the Contract between the Customer and Comcraft Software Limited. Should any terms and/or condition included in the Order conflict with any term and/or condition in this Agreement the term and/or condition in the Order shall take precedence to the extent a conflict exists. Each Order shall be identifiable by a unique Order Number;
- 1.7 "Order Schedule" shall mean the Order and Contracted Period under which any Managed Service is provided
- 1.8 "Price" means the price for the provision of Managed Services or the provision of 3rd Party Equipment contained in the Order;
- 1.9 "Payment Cycle" shall mean the repeated payment schedule as defined in the Order, typically Monthly in advance.
- 1.10 "Market" shall mean the publicly available range of businesses, persons or entities that provide services or solutions at a retail price not under the control of Comcraft Software Limited
- 1.11 "Service Level Agreement" or "SLA" is the target time period defined as an acceptable window in which Comcraft Software Limited would aim to resolve an issue
- 1.12 "User Acceptance Testing" or "UAT" refers to a process whereby the Customer is responsible for testing the delivered solution to ensure they accept its provision, features and performance and accepts conformance to the Order

## 2. Service Provision

- 2.1 All Managed Services are provided in accordance and subject to the terms within Standard Terms and Conditions. All Terms in this document should be read as an ADDITION to the Standard Terms. Where a conflict exists, the terms in THIS DOCUMENT supersedes any terms or clauses within the Standard Terms

## 3. Specifications

**All 3rd Party Services are offered at a Specification Level in accordance with the availability from a 3rd Party**

#### **and level of service required by the Order**

- 3.1 The Customer shall accept that Comcraft Software Limited may alter or change any 3rd Party Service at any time, subject to an equivalent service level being deliverable by any such replacement
- 3.2 The Customer shall accept that variations to the original Order may be necessary subject to the availability of services from the market

## **4. Service Estimates**

**All Service Estimates are provided as an ESTIMATE and are not deemed to be fixed prices. The Customer accept that Estimated prices may vary according to the date ordered, 3rd Party changes or Market Changes throughout the entire term of agreement**

- 4.1 The Customer shall accept that Comcraft Software Limited will offer an Estimated Price for any 3rd Party Service that is provided as a Managed Service. Subject to market volatility 3rd Party service charges may increase giving notice as per the 3rd Party Terms and Conditions giving no less than 30 days written notice.
- 4.2 The Customer accepts that any 3rd Party service or provision will be provided by Comcraft Software Limited only in such circumstances where Comcraft Software Limited is paid in full for any Setup, Management, Maintenance or Administration costs to related to events outside of Comcraft Software Limited's control.

## **5. PRICE AND PAYMENT**

- 5.1 Any 3rd Party service included as part of the Order Schedule is payable in full and may not be terminated before the end date unless accepted by Comcraft Software Limited and in accordance with the terms of **Clause 6** (TERMINATION)
- 5.2 The Customer accepts that any 3rd Party may at its discretion increase costs during the term of the Order Schedule, and the Customer is liable to any such additional payment within 30 days of being notified
- 5.3 3rd Party services (including but not limited to hosting, power charges, bandwidth charges or backup usage) which are variable in cost must be paid for in full by the customer at the earliest / next billing cycle in accordance with any standard payment cycle as defined on the estimate and Order
- 5.4 The Customer accepts that 3rd Party terms vary according to each service and any price change or service change is notified to Comcraft Software Limited, and by Comcraft Software Limited to the Customer within the 3rd Party defined notice period. The Customer may only reject or cancel 3rd Party Services in accordance with each 3rd Party terms and conditions (available on request at the time of Order)

## **6. TERMINATION**

- 6.1 The Termination of any Managed Service may only occur if:
  - 6.1.1 The 3rd Party that provides the service agrees to the Termination, or the Order Schedule has completed;
  - 6.1.2 Comcraft Software Limited agrees to the Termination, or the Order Schedule has completed
- 6.2 The Customer accepts that any Cancellation before the end of the Service Period will result in the Full Price payable as per **Clause 5** (PRICE AND PAYMENT). No refunds may be given for any early cancellation, termination or refusal to use any provided Managed Service unless explicitly agreed in writing by Comcraft Software Limited and any 3rd Party involved in the provision of such cancelled service
  - 6.2.1 In the event Comcraft Software Limited and the 3rd Party agree to any early cancellation pursuant to **Clause 6.2**, the Customer accepts fees and early termination costs will be payable in full subject to a written agreement being made prior to the cancellation of any such service

## 7. Service Level Agreement

- 7.1 Service Level Agreements are limited to those provided by 3rd Party suppliers subject to the required Specification Level and as available at the time from the Market
- 7.2 Any and all Service Level Agreements are provided as Targets and are not guaranteed unless a guarantee is provided by the 3rd Party. No claims by the Customer shall be made against Comcraft Software Limited for any breach of a Service Level Agreement Target that has been exceeded by the 3rd Party
- 7.3 Comcraft Software Limited will endeavour to resolve any breaches of the Service Level Agreement Target with the 3rd Party on behalf of the Customer, and where available in accordance with **Clause 6** (TERMINATION) will facilitate a change of 3rd Party Supplier where appropriate, where necessary and where possible. The Customer shall not make any claim against Comcraft Software Limited for any Managed Service that is delivered according to the SLA of the 3rd Party;  
or where the 3rd Party refused to accept liability;  
or provide a Termination or offer any refund
- 7.4 Response Times are given in the Order Schedule as best-effort Targets. No such Response Time is guaranteed unless such guarantee is provided by a 3rd Party. Comcraft Software Limited will use its best endeavours to provide Service Support within the Response Times, and will use best endeavours to notify the customer prior to the Response Time elapsing should a Support issue not be completed or expected to be completed within the timeframe allowed
- 7.5 The Customer will provide a Single Point of Contact, by way of a staff member, 3rd Party agent or any other Person who the Customer deems as the Technical Contact and Service Owner. The Customer is obliged to notify Comcraft Software Limited 24 hours before any change of such person. Failure to notify Comcraft Software Limited of any change of Person will render the **Clause 7** (Service Level Agreement) unachievable which the Customer must accept

## 8. Data Security and Availability

- 8.1 The Customer shall accept that Comcraft Software Limited will not be liable for any loss of data; availability; or access to any service provided by a 3rd Party Supplier
- 8.2 The Customer shall agree that Comcraft Software Limited will not be held liable for any breach of security of any data held by any 3rd Party, either as a result of 3rd Party negligence or as a result of any Software Vulnerability, Hardware Vulnerability, Network Attack or any other breach not explicitly described
- 8.3 Comcraft Software Limited will use best endeavours within the limits of the Order Schedule, the Equipment chosen, the Software Chosen and any other Order Requirement to provide a secure and stable solution to hold Customer data. The Customer shall accept the risks of Internet Connected devices remain the exclusive risk of the Customer and shall not hold Comcraft Software Limited liable for any breach howsoever caused
- 8.4 The Customer agrees to obtain at its own expense an Intrusion and Monitoring solution of any Internet Connected service to ensure the service meets the criteria of the Customer. Comcraft Software Limited shall not be liable for any breach of security howsoever caused
- 8.5 The Customer agrees to complete a User Acceptance Testing process (UAT) to ensure the supplied service functions in the way acceptable to the customer, and to ensure any Specification Level requested is acceptable to the Customer prior to using any Managed Service provided by Comcraft Software Limited or any 3rd Party
- 8.6 The Customer must nominate a System Manager who would be responsible for any user access credentials, verification of permissions and auditing of usage logs in accordance with the Customers business. Comcraft Software Limited may not be held liable for any misuse of end user credentials and it is the responsibility of the customer to ensure the security requirements meet expectations