

TERMS AND CONDITIONS

These terms and conditions ("**Agreement**") apply to the quote (the "**Quote**") prepared by [PASS Software Limited] (registered in England with number [05065939]) ("**PASS**", or "**us**" or "**we**"), and the customer named in the Quote ("**Customer**" or "**you**"), in relation to the supply by us of the software (comprising all computer software and data supplied with it) (the "**Software**") specified in the Quote, associated media, printed materials and documentation ("**Documentation**") and related support and maintenance services ("**Services**"). If we agree to provide you with Software delivered on a SaaS model that delivery will be subject to our separate SaaS terms and conditions. In this agreement we refer to the Software, Documentation and Services as the "**PASS Solution**".

1 Terms of licence

- 1.1 Subject to your adhering to the terms of this Agreement and the following terms and conditions we grant you a non-exclusive, non-transferable right to use the PASS Solution for your own business needs in the United Kingdom. Unless otherwise stated in the Quote, this licence is limited to you alone using the PASS Solution. The Quote will not be binding on us until you have formally accepted it by signing and returning a the Quote to us.
- 1.2 Your usage of any part of the PASS Solution constitutes acceptance of the Quote and this Agreement. If you breach this Agreement we may suspend your rights to use the PASS Solution.
- 1.3 You may download, install (as appropriate) and use the Software for your internal business purposes only. Unless otherwise stated in the Quote you may only use the PASS Solution in connection with a single database with a single set of data. We licence and authorise you to use the Documentation only to support of the proper, lawful and permitted use of the Software (you may not use the Documentation for any other purpose).
- 1.4 You undertake that except to the extent permitted by any applicable law which is incapable of exclusion by contract you shall not (and shall not attempt) to:
 - 1.4.1 copy (except where to the extent copying is reasonably incidental to normal and proper use, back-up or operational security of the Software), modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the PASS Solution in any form or media or by any means; or attempt to copy, reverse-compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the PASS Solution or attempt to gain unauthorised access to any part of the PASS Solution or any connected system (and you agree to use all reasonable endeavours to prevent any unauthorised access to, or use of, PASS Solution);
 - 1.4.2 access all or any part of the PASS Solution in order to build a product or service which emulates or competes with any part of the PASS Solution;
 - 1.4.3 use the PASS Solution to facilitate any illegal activity;
 - 1.4.4 use the PASS Solution to provide a bureau or other service to third parties;
 - 1.4.5 to license, sell, rent, lease, transfer, assign, distribute, or otherwise make any part of the PASS Solution available to any third party;
 - 1.4.6 disclose any information which is confidential to us or to seek (whether directly or indirectly) to circumvent our interests or to deploy or use (or assist

another to deploy or use) information or processes learned by you as a result of your dealings with us or the PASS Solution otherwise than for your legitimate business purposes that are not in competition with or deleterious to us;

- 1.4.7 to make alterations to, or modifications of, the whole or any part of the PASS Solution nor permit the PASS Solution or any part of it to be combined with, or become incorporated in, any other programs or material, other than for the purpose of creating and maintaining necessary interfaces designed and maintained by us or obscure any copyright or similar notice published by us; and
 - 1.4.8 to permit use of the PASS Solution otherwise in accordance with this Agreement.
- 1.5 You agree to include our copyright notice of on copies you make of any part of the PASS Solution. All third-party software products supplied to you under the Quote are licenced to you under the terms (including but not limited to the restrictions on use, warranty, and support) of the original licensor's agreement which is supplied with such third party software and you shall comply with such terms and conditions at all times.
- 1.6 You acknowledge that all intellectual property rights in the PASS Solution throughout the world belong to us (or our licensors), that rights in the PASS Solution is licensed (not sold) to you on and subject to the terms of this Agreement, and that you have no rights in, or to, the PASS Solution other than the right to use it in accordance with this Agreement.
- 1.7 The integrity of the PASS Solution may be protected by technical protection measures (TPM) so that the intellectual property rights, including copyright, in the PASS Solution are not misappropriated. Whether TPM is in place or otherwise, you must not attempt in any way to remove or circumvent such TPM, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such TPM.
- 2 Payments**
- 2.1 You shall pay us in accordance with the payment terms stated in the Quote. Unless otherwise stated in the Quote all prices are stated exclusive of VAT which shall be payable in addition to the prices stated. Unless otherwise stated in the Quote, we may invoice you monthly in advance (in relation to ascertainable fees) and monthly in arrear in respect of all other fees. Invoices are payable within 30 days of the date on which they are raised.
- 2.2 We may change the amounts charged to you at any time (but you may be entitled to terminate as provided in clause 8.3). We shall give you at least one month's notice if We intend to change any of the amounts payable by you while you continue to use the Services.
- 2.3 If you fail to make any payment due to us by the due date for payment, then we may charge you interest on the overdue amount at the rate of 8% per annum above HSBC PLC's base lending rate from time to time or the maximum permitted by law. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand by us, together with associated debt recovery costs.

2.4 We reserve the right to include mechanisms to inhibit, limit or prevent normal operation of the Software and to activate these or to suspend the delivery of Services until you have made all payments due to us.

3 **Data and privacy**

3.1 You and we each undertake to comply with all applicable provisions of the Data Protection Act 1998 (and any related legislation including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, which is commonly referred to as GDPR) to the extent they relate to your use of the PASS Solution.

3.2 You confirm that you are authorised to store and use the personal data that you communicate through the PASS Solution. We confirm that all data files and records that contain personally identifiable data or personal sensitive data received or held by us in providing the PASS Solution to you are treated by us as data subject information ("**DSI**").

3.3 You agree that if we receive instructions purporting to come from a data subject, we may delete all DSI that we believe needs to be destroyed to ensure compliance with applicable laws, rules and regulations and you shall hold us harmless in respect of any liability or obligation we may incur as a result of complying with the request.

3.4 The policies that we adopt are designed to ensure that the software and hardware under our control and on which we host the PASS Solution and on which DSI is held, processed or transmitted are compliant with relevant privacy laws and we specify that they must use only end-to-end encrypted services using current optimum practices for security. We do not permit our staff to store DSI on any laptop or removable drive unless the data comprising the DSI is encrypted to a standard in line with industry best practice and standards available at that time. We agree not to breach any United Kingdom law relating to the safeguarding and protection of personal data and individual privacy to the extent that such laws apply to Clients (in their capacity as such).

3.5 You are the legal owner of all DSI to the extent that you collect it in relation to any individual as a result of your or the PASS Solution, and we shall deal with that DSI in accordance with your instructions unless those instructions appear to us to risk breaching a law, in which case we may decline to take any action that You so instruct. You agree to indemnify us in respect of any loss or damage that we may suffer as a result of complying with your instructions. You shall own all right, title and interest in and to all of the data created by you using the PASS Solution. We shall not be responsible for any loss, alteration or (unless we are in breach of clause 3.4) disclosure of your data. You agree that your sole and exclusive remedy resulting from any loss or damage to data, shall be for us to use reasonable commercial endeavours to arrange for lost or damaged data to be restored through any back-up controlled by us. You grant us a sole and exclusive royalty-free irrevocable licence to use all non-DSI specific data created or learned by us from your using the PASS Solution. We may use this data on anonymous and aggregated bases.

3.6 You are solely responsible for obtaining, and maintaining all requisite authorisations required for You to operate the PASS Solution and for complying with all rules and laws applicable to you and your business.

4 **Support and services**

4.1 Subject to your paying all fees due to us, we shall provide support services to you in respect of the Software. You agree to be bound by the support terms and conditions attached in the Schedule to this Agreement.

4.2 You and we will agree mutually convenient times for the delivery of the Services. Where such dates are booked in advance, you understand that we are required to commit resources. You will remain liable to pay our costs if you cancel any advance bookings giving fewer than five (5) business days' notice of cancellation. We agree to deploy staff who have reasonable levels of skill to provide Services.

5 **Supply of hardware**

5.1 The quantity and description of the Hardware shall be as set out in the Quote. We shall use reasonable endeavours to transfer to you the benefit of any warranty or guarantee given by the Hardware manufacturer to us. Our sole liability for performance of the Hardware is limited to returning the Hardware to the manufacturer for processing under the manufacturer's warranty or guarantee and on the basis that return of the Hardware to us is within fourteen days of the date of delivery to you. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

5.2 The Hardware is supplied to you on the basis that you are wholly responsible for selecting the Hardware because it is suitable for your business and you have carried out all necessary due diligence to ensure that it is suitable for your requirements. The Hardware shall be at your risk following delivery to you. Ownership of the Hardware shall pass to you when we have received in full in cleared funds all sums due to us in respect of the Hardware.

6 **Warranty and liability**

6.1 You accept that the PASS Solution is supplied to you on the basis that you have determined (in reliance on any functional specification referred to in the Quote) its fitness for purpose for your own specific needs.

6.2 We warrant that the Software will if properly deployed and used in accordance with our instructions perform substantially in accordance with the functions described in the functional specification referred to in the Quote. If you notify us in writing that we are in breach of the warranty in the previous sentence we may (at our sole option) repair or replace the PASS Solution (provided that you make available all the information that may be necessary to assist us in resolving the defect or fault and access to all relevant premises, equipment and personnel, including sufficient information to enable us to understand and recreate the defect or fault). Save as provided in the previous sentence we have no liability in respect of the warranty in this clause 6.2 and all other warranties, conditions and other terms implied by statute or common law are (to the fullest extent permitted by law) excluded from this Agreement.

6.3 We shall maintain with a reputable insurance company a policy or policies of insurance providing no less than £5,000,000 worth of cover in respect of risks which may be incurred by us arising out of the performance of this Agreement and shall provide a certificate evidencing such insurance upon request.

6.4 Nothing in this Agreement excludes or limits our liability for:

6.4.1 death or personal injury caused by our own negligence; or

- 6.4.2 our own fraud or fraudulent misrepresentation.
- 6.5 We shall have no liability to you (and you shall not be entitled to terminate this Agreement) if we are prevented from or delayed in performing our obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond our reasonable control.
- 6.6 Subject to clauses 6.4 and 6.5:
 - 6.6.1 we shall not be liable for any special, indirect, consequential or pure economic loss or for the loss or corruption of data or information;
 - 6.6.2 our total liability shall not exceed the aggregate of the fees paid by you for the Software in the twelve months prior to the relevant liability arising or (if higher) the net amount we recover pursuant to the insurance policy referred to in clause 6.3.
- 6.7 You agree that this clause 5 operates to limit liability the liability of the acts or omissions of our affiliates, employees, agents and sub-contractors.
- 7 **Confidential information**
- 7.1 Each party may be given access to information that is proprietary or confidential and is either clearly labelled as such or identified as confidential information ("**Confidential Information**") by the other party in order to perform its obligations under this Agreement, provided that the information of one party shall be deemed not to constitute Confidential Information if it:
 - 7.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 7.1.2 was in the other party's lawful possession before the disclosure;
 - 7.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 7.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 7.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, for a period of seven years from disclosure of the Confidential Information.
- 7.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this Agreement.
- 7.4 This clause shall survive termination of this Agreement, however arising.
- 7.5 You agree that we may use your name and logo on our website, other promotional material and customer reference lists that we may provide to potential customers.

8 Termination

- 8.1 Unless otherwise stated in the Quote, this Agreement may be terminated by either party giving the other not less than 90 days' notice expiring at the end of the calendar month in which an anniversary of the date on which the Quote was issued.
- 8.2 Either party may terminate this Agreement immediately on written notice to the other if:
- 8.2.1 subject to clause 6.5, the other is in material (or persistent or repeated) breach of this agreement which (if the breach relates to a failure to pay a fee) is not remedied within 14 days after written notice requiring payment to be made;
 - 8.2.2 the other becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).
- 8.3 You may terminate this agreement by giving us at least six months' written notice within one month of our notifying you pursuant to clause 2.2 of a price increase (other than any "pass-through" increase) that is more than 2% above the increase in the Retail Prices Index published by the Office for National Statistics of the United Kingdom Government (calculated since the date of the last increase to our price), if you give us such notice the notified increase shall not apply to you.
- 8.4 On termination of this Agreement you shall forfeit all rights granted to you under this Agreement and you agree that you shall immediately stop using all parts of the PASS Solution and delete or remove the Software from all computer equipment in your possession and immediately destroy or (at our option) return all copies of it and the Documentation in your possession, custody or control to us and, in the case of destruction, certify such destruction us and all amounts due from you shall become immediately payable together, if we have terminated this Agreement pursuant to clause 8.4, the amount that would have been payable in respect of the notice period if you had given notice to us in accordance with clause 8.1 on the date on which the Agreement is terminated.

9 General

- 9.1 All copyright, rights in relation to databases, design rights, registered designs, patents, trade and service marks (registered and unregistered), know-how, rights in or relating to confidential information or any other intellectual property rights or industrial property rights or other rights of a similar nature anywhere in the world associated with any ideas, concepts, techniques, inventions, processes or works of authorship developed or created by us or our personnel or contractors during the course of providing the PASS Solution shall belong exclusively to us.
- 9.2 Where requested by you, we shall enter into a three-party source code escrow agreement in respect of the Software with you and the escrow agent which we have selected, the charges and fees associated with such arrangement being at your expense.

- 9.3 This Agreement is binding on you and us and on our respective successors and assigns. You and we may each transfer, assign, charge or otherwise dispose of this Agreement, or any of our rights or obligations arising under it provided that you shall not do so without first obtaining our written consent.
- 9.4 Our failure to insist upon strict performance of any of your obligations under this Agreement or to exercise any of the rights or remedies to which we are entitled under this Agreement shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations. A waiver by us of any default shall not constitute a waiver of any subsequent default. No waiver by us of any part of this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.
- 9.5 If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 9.6 This Agreement together with the Quote (and any document expressly referred to in it) represents the entire agreement between us in relation to the provision of the PASS Solution and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing. You acknowledge that, in entering into this Agreement, you have not relied on any representation, undertaking or promise given or which can be implied from anything said or written in negotiations between us prior to entering into this Agreement which is not expressly stated in this Agreement.
- 9.7 Both parties shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 9.8 Neither party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of one year after it has terminated, solicit the services of any senior staff of the other party who have been engaged in the management of this Agreement either as principal, agent, employee, independent contractor or in 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 the other party.
- 9.9 This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

Schedule

Support terms and conditions

1 Provision of Services

- 1.1 We shall provide a telephone-based Help-Desk for software and technical support for the Software and the SaaS Service, available during its usual business hours ("*Support Services*"). We shall also provide an error correction and software updating service. We shall endeavour to comply with the anticipated target response times and target fixes shown at the end of this Schedule.
- 1.2 Upon receipt of a written support request from you identifying a fault in the Services, PASS shall attempt to carry out diagnosis remotely by telephone and remote access link (where remote access is available) of the reported fault.
- 1.3 If the support request relates to interface with other software packages or environments, or similar issues where the fault cannot be diagnosed as being clearly caused by the supported Services, PASS will use its reasonable endeavours to assist you in finding a resolution to the problem, subject to the acceptance by you of the additional charges to be levied, as outlined in paragraph 3 below.

2 Additional charges

Unless otherwise stated in the Quote, PASS will levy additional charges for out of our usual business hours service at our current rates (currently an initial charge of £100 and then £100 per hour or part of an hour).

3 Variation

PASS operates an online ordering system for existing customers and you agree to make use of the online ordering system so that quotes managed using the online system are subject to this Agreement. If you change the software licensed from us or the Services used the changes to support charges will take immediate effect, unless otherwise stated in the Quote related to the relevant software or Services.

4 Customer requirements

It is a condition of these terms and conditions that you report faults.

5 Limitations and exclusions

- 5.1 PASS will use reasonable commercial endeavours to respond to calls from you for the Support Services and provide updates of status and possible remedies reasonably promptly.
- 5.2 Where required and as determined by PASS as the appropriate response, a site visit will be arranged. No guarantee or warranty is given of any times for response or that PASS will be able to rectify any problem within a particular time-scale. Any modification or error correction to software may be provided by secure FTP or email. If other delivery means, for example courier service, is required the delivery will be arranged at your cost.
- 5.3 Our obligation to provide the Support Services is conditional upon the proper use of the Software and Services and PASS is not obliged to provide Support Services where the faults arise from any of the following: misuse, incorrect use of or damage to the Software from whatever cause, including failure or fluctuation of electrical power; failure to maintain the necessary environmental conditions for use of the Software; use of the Software in combination with any equipment or software not provided by PASS or not designated by

PASS, or any fault in any such equipment or software; any breach of your obligations under this Agreement, any modification to the Software which is not expressly authorised by PASS or operator error.

- 5.4 Unless otherwise agreed by us in writing these support terms shall apply to the most recent generally available Release or Version of the Software ("LV") as well as the immediately preceding Release or Version ("LV-1"). Customer understands and agrees that PASS shall have no obligation to support any Release or Version of the Software that is older than LV-1. For the purposes of this paragraph, the term "Release" shall be defined as a specific edition of the Software, designated by a number located to the left of the first decimal point (such as Release 1.x or Release 2.x), and the term "Version" shall be defined as a specific edition of the Software, designated by a number located to the right of the first decimal point (such as Version x.1 or Version x.2).

5.5 Our priority categorisations and target response times are as stated below:

Priority level	Level Business Impact	Anticipated Target Response	Anticipated Target Fix
1	'Priority 1' – where Customer's operations are significantly affected. The Licensed Software or major components of the Licensed Software are inoperable or not working correctly and no workaround exists.	1 business hour	Emergency Service Pack
2	'Priority 2' – where a minor component or function of the Licensed Software is inoperable or not working correctly, or a Problem exists in a major component, but a temporary work-around is available.	1 business day	Next planned release
3	'Priority 3' – where a problem in the Licensed Software is detected which has minimal impact on the daily operations, or for which a permanent work-around or fix is available.	2 business days	Next planned major release
4	'Priority 4' – a cosmetic change is proposed or a new feature is requested.	5 business days	Next user group review