

## MANAGED SERVICES AND SUPPORT TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Managed Services and Support Terms.

**Assets:** means any Software Asset or Intellectual Property Rights provided by the Customer for use by Bechtle for the delivery of Services to the Customer.

**Bechtle:** Bechtle Limited registered in England and Wales with company number 03283032 and any subsidiary or holding company or associate (as defined in the Companies Act 2006 as amended) of the said company.

**Conditions:** these Managed Services and Support Terms together with the General Terms and Conditions.

**Customer Cause:** any of the following causes; (a) any improper use, misuse or unauthorised alteration of the Services by the Customer; any use of the Services by the Customer in a manner inconsistent with the then-current Service Specification; (b) the use by the Customer of any hardware or software not provided by Bechtle or approved by Bechtle in the Services Specification for use by the Customer in connection with the Services.

**Equipment:** the Rented Equipment and Sold Equipment.

**Error:** a failure of the Service in any material respect to conform with the Service Specification.

**Exit Plan:** a detailed plan for the orderly transition of the Service from Bechtle to the Customer or the Replacement Bechtle.

**Extended Term:** has the meaning given in Clause 15.1.

**Facility:** any building belonging to or occupied by Bechtle for the provision of the relevant Services.

**Incident:** a break in Service, such as declined access, or deterioration in the service, or unacceptably poor response.

**Indirect Third Party Services:** the services of third parties which are to be provided to the Customer as part of the Services.

**Initial Term:** the period for the supply of the Services from the Service Commencement Date or, if no period is specified, a period of 3 calendar years.

**Managed Services:** the Managed Services and Support specified in an Order and the Service Specification.

**Order:** an order placed by the Customer for Managed Services and Support, set out in the Customer's purchase order form, or the Customer's written acceptance of Bechtle's quotation as the case may be.

**Project Plan:** the plan to be developed to outline the provision of Services (including any set-up services).

**Replacement Bechtle:** the Customer's nominated replacement supplier.

**Service Commencement Date:** means the date specified in the Order from which Bechtle is to provide the Services or the actual date from which Bechtle provides the Services.

**Service Credit:** means any credits payable to the Customer in accordance with the Service Level Agreement.

**Service Level Agreement:** the service level arrangements agreed in writing in respect of Services as detailed in the Service Specification.

**Software Asset:** means any software used by Bechtle exclusively to provide the Service to the Customer whether owned by a third party (**Third-Party Software**), by the Customer (**Customer Software**) or by Bechtle (**Bechtle Software**).

**Service Specification:** the description or specification for the Services provided in writing by Bechtle to the Customer.

**Services:** the Managed Services as set out in the Order and as described in the Service Specification.

**Sold Equipment:** any apparatus or equipment as specified in the Order to be sold to the Customer by Bechtle or any third party on behalf of Bechtle.

**Step-In Rights:** the ability for the Customer to step-into a direct relationship with the third party supplier of Indirect Third Party Services in place of Bechtle.

**Term:** the term of this Contract being the Initial Term and/or the relevant Extended Term, as appropriate.

**Third Party:** any third party provider for any Service as stated on the Order.

**Transferring Contracts:** the third-party contracts (including licenses to Third-Party Software) which Bechtle reasonably considers necessary to enable the transition of the Services to the Customer or any Replacement Bechtle on expiry or termination of this Contract.

**Transition Services:** the putting into effect of the Exit Plan or other reasonable assistance in transitioning the Services to a Replacement Bechtle.

**User:** the employees and agents of the Customer who use the Licensed Software up to the maximum number specified in the Order Form.

- 1.2 Expressions defined in the General Terms and used in these Managed Services and Support Terms have the meaning set out in the General Terms unless otherwise defined. The rules of interpretation set out in the General Terms apply to these Managed Services and Support Terms.
- 1.3 These Managed Services and Support Terms shall apply to and be incorporated into the Contract where the Order states that they shall apply.

## **2. SET-UP OF SERVICES**

- 2.1 Where appropriate, the Customer and Bechtle shall agree a Project Plan and a Service Specification for the implementation and provision of Services.
- 2.2 Bechtle shall perform any installation and set-up services in accordance with the timetable set out in the Order. Bechtle shall use reasonable endeavours to meet the performance dates set out in the Order, but any such dates shall be estimates only, and time shall not be of the essence in this Contract in respect of Bechtle's obligations.
- 2.3 When Bechtle considers that the relevant Service is ready for activation it shall so notify the Customer. Within 5 days of such notification the Customer shall review the operation of the Service to confirm that there are no Errors. The Customer shall give Bechtle a detailed description of any Error in writing, within the 5-day review period.
- 2.4 Bechtle shall use reasonable efforts to correct any Error within a reasonable time and, on completion, re-submit the Service to the Customer. The provisions of this clause 2.4 shall then apply again, up to

three additional times. If Bechtle is unable to correct the Error after three attempts, either party may terminate this Contract without further liability to the other. The Customer acknowledges that a change to the Specification is not an Error and changes shall be handled pursuant to the change control procedure in the General Terms and Conditions.

2.5 If the Customer does not provide any written comments in the 5-day period described above, or if the Service is found to conform with the Service Specification then the Service shall be deemed accepted as from the Service Commencement Date.

### **3. PROVISION OF SERVICES**

3.1 Bechtle will provide the Services in accordance with the Services Specification and the Service Level Agreement as from the Service Commencement Date until expiry or termination of the Contract for any reason.

3.2 The Service Level Agreement for any particular Service shall apply with effect from the start of the first complete month occurring at least 30 days after the Commencement Date.

3.3 The Customer acknowledges that Bechtle shall provide or resell various third party services to the Customer as part of the Services under this Agreement. Bechtle shall use reasonable endeavours to obtain the Indirect Third Party Services with Step-In Rights.

3.4 Bechtle reserves the right to:

- (a) modify Bechtle's IT system, its network, system configurations or routing configuration; or
- (b) modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network,
- (c) provided that this has no adverse effect on Bechtle's obligations under this Contract and its provision of the Services or the Service Level Agreement. If such changes will have an adverse effect, Bechtle shall notify the Customer and the parties shall follow the change control procedure as set out in the General Terms and Conditions.

### **4. SALE OF EQUIPMENT**

Bechtle's General Terms and Conditions in force from time to time shall apply to all Sold Equipment under the Contract. If there is any inconsistency between the General Terms and Conditions and these Managed Services and Support Terms then in respect of the Sold Equipment, the latter shall prevail.

### **5. BECHTLE'S OBLIGATIONS**

5.1 Bechtle warrants that each of the Services will be performed with reasonable skill and care and that it will be provided substantially in accordance with the relevant Service Specification.

5.2 The warranty in clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of any of the Services contrary to Bechtle's instructions.

5.3 If the Service does not conform with the warranty in clause 5.1, Bechtle will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

5.4 Notwithstanding the foregoing, Bechtle does not warrant that the Customer's use of the Software and any Services will be uninterrupted or Error free.

5.5 Where the Sold Equipment is hosted at the Facility, Bechtle shall not use the Sold Equipment for any purpose other than for performing its obligations under the Contract.

5.6 This Contract shall not prevent Bechtle from entering into similar Contracts with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Contract.

## **6. EXPENSES**

The Customer shall reimburse Bechtle for all actual, reasonable travel expenses including, but not limited to, airfares, hotels and meals incurred by Bechtle in performance of any set-up services, which Bechtle shall reasonably agree with the Customer in advance.

## **7. SERVICE CREDITS**

7.1 If Bechtle fails to provide the Services in accordance with the relevant Service Specification, the Customer shall become entitled to a Service Credit as specified in the Service Level Agreement, provided that the failure or other problem relating to the Services:

- (a) did not result from a Customer Cause or a cause outside Bechtle's control; and
- (b) was promptly notified to Bechtle.

7.2 Service credits may arise as specified in any part of the Services but shall be isolated in respect of that particular Service and a service credit under one type of service shall not automatically give rise to a service credit under another.

7.3 Where a proportion of a Service was affected, Bechtle may pro-rate the service credits in accordance with the extent to which it, in its reasonable discretion, assessed the Service in question to be affected.

7.4 On expiry or termination of this Contract for any reason, any unpaid Service Credits represent a debt due from Bechtle to Customer.

7.5 Save in respect of Service Credits which Bechtle applies to an invoice, payment of all sums due to Bechtle by the Customer shall be made without any set-off whatsoever.

7.6 If any Service Credits are due then they will be shown as a deduction from the next invoice in respect of that Service.

## **8. PROPRIETARY RIGHTS**

8.1 The Customer acknowledges and agrees that, as between the parties, Bechtle and/or its licensors own all Intellectual Property in all materials connected with the Services and in any material developed or produced in connection with the Contract by Bechtle, its officers, employees, subcontractors or agents. Bechtle grants the Customer a non-exclusive licence to use the Intellectual Property for the purposes of the Services. Except as expressly stated, these Managed Services and Support Terms do not grant the Customer any rights to such Intellectual Property.

8.2 Bechtle acknowledges that, as between the parties, the Customer and/or its licensors own all Intellectual Property in the Assets.

8.3 Subject to the Customer complying with clause 8.4, Bechtle shall indemnify the Customer against all costs, expenses, damages and losses as a result of or in connection with any claim brought against the Customer 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.

8.4 The Customer shall:

- (a) notify Bechtle in writing of any claim against it in respect of which it wishes to rely on the indemnity in clause 8.3;

- (b) allow Bechtle, at its own cost, to conduct all negotiations and proceedings and to settle such claim;
- (c) provide Bechtle with such reasonable assistance regarding such claim as is required by Bechtle at Bechtle's cost.

## **9. SERVICE REVIEW AND GOVERNANCE**

- 9.1 The Customer's and Bechtle's project managers shall have pre-arranged scheduled meetings to monitor and review the performance of the Contract, to discuss any changes proposed in accordance with the change control procedure in the General Terms and Conditions and to discuss the Service Level Agreement (Review Meeting). These meetings shall be minuted by Bechtle's project manager and copies of those minutes shall be circulated to, and approved by, both parties.
- 9.2 Before each Review Meeting, the Customer's project manager shall notify Bechtle's project manager, and vice versa, of any problems relating to the provision of the Services for discussion at the Review Meeting. At each Review Meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next scheduled meeting.

## **10. DOMAIN NAMES**

- 10.1 If the Customer instructs Bechtle to obtain a domain name for the Customer, Bechtle shall act as an agent for the Customer in dealing with the relevant Domain Name Registrar. The contract for the domain name shall be between the Customer and the relevant Domain Name Registrar. Save where Bechtle agrees to provide it as part of the Services, the Customer agrees that it shall be solely responsible for renewals, legal, technical, administrative, billing or other requirements imposed by the relevant domain name registration authority (and relevant costs and expenses thereof).
- 10.2 Bechtle gives no warranty that the domain name requested will not infringe the rights of any third party and all such enquiries shall be the responsibility of the Customer, and the domain name shall form the Customer's intellectual property for the purposes of this Contract.
- 10.3 If Bechtle licenses to the Customer an IP address as part of the Services, such IP address shall (to the extent permitted by law) revert to Bechtle after termination of this Contract for any reason whatsoever, whereupon the Customer shall cease using the address. At any time after such termination, Bechtle may re-assign the address to another User.

## **11. RESULTS FROM SERVICES**

Except as expressly and specifically provided in the Contract the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Bechtle shall have no liability for any damage caused by Errors or omissions in any information, instructions or scripts provided to Bechtle by the Customer in connection with the Services, or any actions taken by Bechtle at the Customer's direction; and

## **12. SUSPENSION OF THE SERVICES**

- 12.1 Bechtle may at its sole discretion upon giving notice to the Customer either orally (confirming such notification in writing) or in writing elect to suspend immediately the provision of the Services until further notice where:
- (a) Bechtle is entitled to terminate this Contract pursuant to Clause 15;
  - (b) Bechtle or a Third Party needs to carry out any maintenance service to the Sold Equipment or Bechtle's own equipment necessary to provide the Services in which event Bechtle shall use its reasonable endeavours to ensure there is minimum disruption to the Services;

- (c) Bechtle or a Third Party suspects that the Equipment or Services are being used fraudulently or otherwise unlawfully;
- (d) Bechtle is entitled to suspend provision of any other telecommunication service under the terms of any other Contract between Bechtle and the Customer; or
- (e) Bechtle is obliged to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority.

12.2 Any exercise by Bechtle of its right of suspension in respect of an event referred to this clause 12 shall not exclude Bechtle’s right subsequently to terminate this Agreement.

12.3 In the event a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse Bechtle for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.

12.4 Bechtle shall not be liable to the Customer for any charges incurred by the Customer for the use of other services whether provided by Bechtle or any other person during any period of unavailability referred to in Clause 12.1.

**13. FAULT REPORTING, HANDLING AND MANAGEMENT**

13.1 The primary objective of Incident management is to restore service as soon as possible. This may be achieved using an acceptable workaround whilst the root cause is investigated separately.

13.2 Bechtle will provide a manned Service/Help Desk for Incident resolution (Helpdesk).

13.3 The Helpdesk will be based in the UK, with the primary location being at the Bechtle’s offices in Northampton.

13.4 The Helpdesk will be available to the Customer from 8:30am until 5:30pm on Working Days.

13.5 Calls reporting Incidents made to the Helpdesk will be logged and qualified by a first line operative, the call will be given a unique reference number and the caller will be advised of this number.

13.6 An initial assessment of the Incident is made by the first line operative and if possible the Incident will be resolved at this stage. If the Incident cannot be resolved at this stage it will be escalated either to a second line engineer, a field engineer or the Onsite Engineer as appropriate.

13.7 During the initial assessment undertaken in accordance with paragraph 13.6 the operator will confirm the priority level of the Incident in accordance with the table below:

PRIORITY	DEFINITION
<b>Critical</b>	Any Incident that affects core business services which may or may not affect multiple Users.
<b>High</b>	Any Incident affecting multiple Users which disrupts work.
<b>Medium</b>	Any Incident affecting a single User which disrupts work.

<b>Low</b>	Moves and changes to IT environment, requests for information etc.
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13.8 All Incidents will be logged, monitored and prioritised on the Bechtle’s Service Management Platform.

13.9 All work carried out on a particular call will be entered on the Bechtle’s Service Management Platform and an electronic record will be maintained. The electronic record will be provided if requested in writing by the Customer within 2 Working Days of receiving the request.

13.10 Bechtle will provide the Customer and nominated Users with access to open and recent Incident history and the ability to log new calls.

13.11 The Customer will be able to report issues or queries to the Helpdesk via email to the Helpdesk’s dedicated email address.

13.12 Such requests must include the Users contact details and a brief description of the issue, an automated response will be sent upon receipt of this e-mail. This e-mail will then be checked and a call logged on the Bechtle’s Service Management Platform and a unique reference number issued to the sender before the Incident will be handled in accordance with paragraph 13.7

13.13 Bechtle may use its own systems and processes to identify, log and action Incidents automatically on the Customer’s behalf.

13.14 All Incidents reported to the Helpdesk shall be prioritised in accordance with the priority definition set out in paragraph 13.7.

13.15 Bechtle will contact the User who reported the Incident and will agree with the User what the Incident is about and provide them with the following information regarding the Incident reported:

- (a) Bechtle will allocate an owner to the Incident.
- (b) Feedback from initial attempts to resolve the issue by phone or remotely.
- (c) Whether the Incident is related to a software failure or not; and
- (d) A clear outline from the Bechtle as to what the next stages are and the target resolution time.
- (e) Bechtle response will be provided in accordance with the Priority Levels set out below:

INCIDENT PRIORITY LEVEL	SERVICE LEVEL
Critical	1 hour
High	4 hours
Medium	8 hours
Low	2 days

Time from initial call or email from User in Working Hours or Working Days

#### **14. INSTALLS/MOVES/ADDITIONS/CHANGES (IMAC) PROVISION**

Installs/Moves/Additions/Changes (IMAC) are not included within the service and as such where conducted outside of the support contact, or implemented outside normal business hours will be subject to the Bechtle's prevailing professional services charges.

#### **15. TERM & TERMINATION**

15.1 The Contract shall commence on the Commencement Date and shall, unless terminated earlier in accordance with clause 10 of the General Terms, continue in force for the Initial Term. The term of the Contract shall automatically be extended for successive 12-month periods (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term, unless a party gives written notice to the other party, not later than 120 days before the end of the Initial Term or the relevant Extended Term, to terminate this Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

15.2 On termination of this Contract for any reason, then the following provisions shall apply to such termination as appropriate:

- (a) Bechtle shall immediately cease provision of the Services but may provide Transition Services for a further period in accordance with clause 16.2;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) Bechtle may destroy or otherwise dispose of any of the Customer Data in its possession unless Bechtle receives, no later than ten days after the effective date of the termination or expiry of this Contract, a written request for the delivery to the Customer of the most recent backup of the Customer Data. Bechtle shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Charges outstanding at, and resulting from, termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Bechtle in returning or disposing of Customer Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15.3 Notwithstanding its obligations in clause 15.2(c), if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 15.2(c), it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 9 shall continue to apply to any such retained documents and materials.

#### **16. EXIT ASSISTANCE AND TRANSFER OF ASSETS**

16.1 Bechtle shall, on request from Customer at any time after the expiry of six months from the Commencement Date, prepare or update the Exit Plan.

16.2 Upon notice of termination by the Customer under clause 15 the Customer may activate the Step-In Rights with the Indirect Third Parties to continue with the Indirect Third Party Services on a direct relationship basis.

16.3 The Customer may, at any time before termination of this Contract, for any reason, request Bechtle to provide the Transition Services. Bechtle will, in return for a reasonable charge (to be agreed in advance),



provide such Transition Services for a maximum period of three months, or until termination of this Contract in accordance with clause 13, whichever is later.

16.4 On expiry or termination of this Contract Bechtle will promptly produce a list of the Rented Equipment and of the Transferring Contracts. Bechtle shall then sell, and the Customer shall buy, the Rented Equipment for net book value, calculated in accordance with Bechtle's reasonable then-current depreciation policy. Title to such Rented Equipment shall pass to the Customer on payment for the same.

16.5 Bechtle and Customer shall co-operate to procure the novation or assignment to the Customer and/or Replacement Bechtle of the Transferring Contracts.

16.6 The Customer shall:

- (a) accept assignments from Bechtle or join with Bechtle in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or re-assigned to the Customer or the Replacement Bechtle, the Customer shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Bechtle does the same.