



# MASTER SERVICE AGREEMENT

ALL CLIENTS

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## **Terms and Conditions**

In this Contract "**Tycom**" means Tycom Limited, and any Client is hereafter referred to as "the Customer".

All orders are subject to confirmation and acceptance in writing by **Tycom** on the basis that the terms and conditions outlined below are agreed to by the Customer. The Customer acknowledges that it has read and accepts these terms and conditions.

It is also a vital facet of these terms that all support contracts are payable in advance of the services being rendered, and non-payment of services may render them to be withdrawn until payment has been received.

## **Term**

This contract shall supersede any and all prior contracts and understandings, whether written or oral between the Parties in relation to the subject matter of this contract.

The latest version of the Master Services Agreement shall always be the Agreement enforced, which will be available on our website.

## **General Conditions**

### **Applicability**

These conditions shall apply to all services provided under this agreement. Such services will be performed at the Client site(s), at **Tycom**'s premises or elsewhere as may be agreed in writing and will be in respect of the items / services as appropriate.

Under this agreement, **Tycom** shall directly, or through its approved sub-contractors:

1. Provide a dedicated telephone call logging facility to ensure an efficient method of logging and controlling requests for assistance. Details will also be accepted by email, fax or letter.
2. Provide the required properly trained competent personnel, maintenance tools, diagnostics and documentation to enable a high quality service to be provided.
3. Provide service on a non-disruptive basis wherever possible.
4. Where an urgent or persistent problem cannot be resolved within the normal procedures **Tycom** will activate its own internal escalation procedures.

### **Personnel**

1. All personnel providing service under the agreement will remain solely under the conditions of employment and management of **Tycom**.
2. The Customer shall take all reasonable precautions to ensure the health and safety of **Tycom** employees or sub-contractors while on the Customer's premises.
3. It is an essential term of this Agreement that the Customer agrees and undertakes that it will not at any point during the term of this Agreement and for twelve months after this Agreement is terminated, howsoever arising, canvass, solicit, entice or approach any employee of **Tycom** engaged in the provision of the Services to the Customer at any time in the period of 12 months immediately preceding such canvassing, solicitation, enticement or approach, to leave the employment of **Tycom**.

## Assignment and Sub Contracting

1. Neither party may assign or transfer this Agreement or any of its rights herein without prior written consent of the other party. Such consent not to be unreasonably withheld.
2. It is acknowledged and agreed by the parties that **Tycom** shall have the benefit of all manufacturers warranties with respect to the Hardware for the purpose of performing the terms of the agreement and shall accordingly have consent to sub-contract any of the provisions hereof to such manufacturers.
3. The Customer agrees to allow **Tycom** to assign, delegate and subcontract services to third party competent contractors approved by **Tycom** where required.

## Tycom or sub-contractor's property

1. Materials provided by **Tycom** such as documentation, schematics, test equipment, software and associated media, shall remain the exclusive property of **Tycom** or its sub-contractor and shall be for their sole use.
2. No **Tycom** or approved **Tycom** sub-contractors copyright material may be reproduced in any form without prior written permission.
3. The Customer acknowledges that any equipment supplied by **Tycom** for purpose of fulfilling our obligations under this contract will remain the sole property of **Tycom** which retains a 100% security interest. The Customer will not attempt to sell, resale, tamper, troubleshoot, repair, move, add, etc to this equipment without prior written permission of **Tycom**. The Customer shall also take all reasonable efforts to keep the equipment safe, secure and protected while in their possession. The Customer acknowledges that it shall be responsible for the costs of replacement for any damaged or lost equipment.

## Data protection

1. The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to **Tycom** under or in connection with this Agreement.
2. **Tycom** warrants that:
  - (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.
  - (c) it will ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential and are aware of current data protection legislation.
  - (d) it will not to transfer any Personal Data outside of the UK unless prior written consent has been obtained, appropriate safeguards are in place and both comply with our reasonable requests.
  - (e) it agrees to assist the Customer in responding to any request from a Data Subject and in complying with obligations under the Data Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators in relation to the agreement.
  - (f) it agrees to inform us and the ICO within 72 hours of becoming aware of a data breach affecting any relevant Personal Data.
  - (g) it shall comply with the Customer's written direction, to delete or return Personal Data and copies thereof to us on termination of the agreement unless (and only to the extent) required by Data Laws or wider legal obligations to store or maintain a copy of some or all of the Personal Data.

## Confidentiality and publicity

1. **Tycom** will:
  - (a) keep confidential and not disclose the Customer Confidential Information which shall include confidential information pertaining to Customers clients to any person save as expressly permitted by this Clause;
  - (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
2. The Customer will:
  - (a) keep confidential and not disclose **Tycom** Confidential Information to any person save as expressly permitted by this Clause;
  - (b) protect **Tycom** Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
3. Neither Party to this Agreement and their respective Officers and Employees shall disclose Confidential Information to any third party without the consent of the other party.
4. The obligations set out in this Clause shall not apply to:
  - (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
  - (b) Customer Confidential Information that is in possession of **Tycom** prior to disclosure by the Customer, and **Tycom** Confidential Information that is in possession of the Customer prior to disclosure by **Tycom**;
  - (c) Customer Confidential Information that is received by **Tycom**, and **Tycom** Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or
  - (d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

5. Neither party will make any public disclosure relating to this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

## Termination

This Master Services Agreement shall remain in force for the duration of any Services Agreement in place with **Tycom**. Either party shall be entitled to terminate the Services Agreement if:

1. The other party commits a material breach of this agreement which is not remedied within 30 days after notice to remedy is given by the other party.
2. If the Customer petitions for bankruptcy or is adjudicated bankrupt or if an administrator or receiver is appointed over the Customer's business or has presented or presents a petition for winding up or enters into liquidation (except for the purposes of amalgamation or reconstruction) or makes an arrangement for the benefit of creditors or if the Customer defaults in payment for any sum due to **Tycom** or otherwise fails to fulfil its obligations hereunder then **Tycom** shall have the right to terminate this Agreement forthwith without prejudice to any other remedies **Tycom** may have.
3. If **Tycom** petitions for bankruptcy or is adjudicated bankrupt or if an administrator or receiver is appointed over **Tycom**'s business or has presented or presents a petition for winding up or enters into liquidation (except for the purposes of amalgamation or reconstruction) or makes an arrangement for the benefit of creditors or if **Tycom** defaults in payment for any sum due to the Customer or otherwise fails to fulfil its obligations hereunder then the Customer shall have the right to terminate this Agreement forthwith without prejudice to any other remedies the Customer may have
4. At least 90 days' notice of termination is given in writing prior to any anniversary date.

## Force Majeure

**Tycom** shall be relieved from all liability under any contract to the extent that it shall be unable to carry out / be delayed in carrying out all or any of its obligations under this agreement by reason of wars, strike, lockouts, government controls or restrictions, non-availability of goods or personnel or any cause whatsoever beyond **Tycom**'s reasonable control.



## Limitation of Liability

**Tycom** shall not be held liable for any loss or damage, whatsoever, whether direct, indirect or consequential inclusive of, but not limited to, loss of work time or productivity, financial loss, existing or prospective customer base, computer or network access and/or loss or damage to property, equipment, software, data or premises. Furthermore **Tycom's** liability in relation to any event or series of related events will not exceed the total amount paid by the Customer to **Tycom** under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim. Furthermore, in the event that negligence is established and liability is justifiably owed to the Customer, the amount of damages payable by **Tycom** is capped at the same level stipulated above.

## Proper Law and Jurisdiction

The Contract shall in all respects be governed by and construed in accordance with the law of Scotland and the Customer hereby submits irrevocably to the non-exclusive jurisdiction of the Scottish Courts. At all times any requests from the Law Enforcement agencies of Scotland or The United Kingdom, or any other governmental or relevant agency which may hold legal authority over **Tycom**, shall take precedence to any clause in this contract. Both **Tycom** and the Customer agree that they shall accept any request from said legal authority so long as this request is made in writing by the authorities and verified as authentic.

The Governing Law shall be Scottish Law.

## Customer Obligations

1. The Customer shall allow **Tycom** reasonable access to the system and use of other required equipment necessary to service the system.
2. The Customer will take full responsibility for ensuring adequate backups are taken unless the Customer has in place our Standard Backup offering of Continuity Cloud.
3. Where Continuity Cloud is in place, the Customer accepts that it's backups are currently handled by **Tycom** and shall follow all instructions as provided per that contract. The client shall not move any **Tycom** server supplied to fulfil this obligation. Where applicable, a minimum of two staff must be conversant with any backup routines implemented by **Tycom**. These routines should not be altered without prior consultation with **Tycom**. Agreement to any alteration should be obtained in writing.

4. If at any stage support is required and adequate backup is not available, this should be clearly stated. If the backup copies maintained by the Customer are inadequate, any investigation or remedial work will be chargeable, the terms of which will be agreed in writing on a per incident basis.
5. The Customer shall purchase and apply manufacturer's warranty extensions for business critical infrastructure to an agreed response level throughout the life of the equipment. **Tycom** can assist with the procurement and application of these. **Tycom** recommend that for servers the maximum response on these warranty extensions or care packs should be 4 hours.
6. The Customer shall undertake to use all reasonable endeavours to assist **Tycom** in providing services under this agreement. Remote Access is required, solely for the purpose of carrying out the service, and any reasonable Customer Requirements regarding **Tycom**'s remote login and security policies will be met. Full details of these should be provided by the Customer and kept up to date. Any login names provided for **Tycom**'s use will require the necessary security rights allowing access to all areas of the System where relevant data and Software reside.
7. The Customer shall use its best endeavours to maintain consistent configurations of all desktop and portable computer equipment and related software. To this end, the Customer and **Tycom** shall agree in writing on the appropriate required configuration combinations.
8. The Customer should nominate individuals who will be the principal contacts within the firm and who can log calls. There must be a minimum of two nominated contacts to cover for sickness and holidays. Details of these contacts should be provided by the Customer and kept up to date – see Appendix II. It is important that these individuals have the appropriate expertise to allow service functions to be implemented successfully. To this end, the individuals should receive adequate training in the use of all relevant software.
9. Adequate telephone apparatus must be provided, allowing nominated contacts to converse with our Service Desk team whilst attending any device.
10. The Customer is responsible for ensuring that all media/licences and installation keys for the system are available and current.
11. Where applicable, the Customer must maintain proof of licence for the Software on Site.
12. The Customer shall provide for **Tycom** all such information and give **Tycom** access to all such records and other documents as may be necessary to enable it to carry out the terms of this contract in a regular and expeditious manner. If and to the extent that **Tycom** shall be delayed in the execution of the contract by the failure of the Customer to provide such information and/or access as foresaid then **Tycom** shall be entitled to recover from the Customer any additional costs that **Tycom** may incur by reason of such delay.
13. The Customer acknowledges that software code is never wholly free from defects, errors and bugs.

14. Where applicable, it is incumbent on the Customer to ensure that all licence documentation, media and keys are stored securely and made available to **Tycom** personnel as required.
15. The Customer shall endeavour at all times to operate themselves in a professional manner with due consideration and respect given to any **Tycom** member of staff attempting to help them. Any abuse from the Customer to our Engineers shall not be tolerated and may be considered a material breach of this contract, with appropriate action taken where necessary including but not limited to termination of this Contract.

## Exclusions

The following maintenance services are not included under this agreement.

1. Services which in **Tycom**'s reasonable opinion are required due to accident, fire, water damage, neglect, misuse, failure of electrical power, air conditioning or humidity control, failure of storage media or operating errors.
2. Services required due to unauthorised attempts by other than **Tycom**'s personnel or sub-contractor to repair, maintain or modify the Systems covered by this agreement.
3. Services required due to unauthorised attempts by other than **Tycom**'s personnel or sub-contractor to move any equipment with the exception of printers and client devices that may be moved with care within the same building.
4. Any modifications without **Tycom**'s agreement could invalidate the service. This includes all modifications to the set up of servers or to PC workstations. The addition of screen savers, games etc can easily lead to workstation malfunctions and performance difficulties. Under these circumstances **Tycom** reserves the right to charge for services required to deal with any problems brought about by this.
5. Repair of damage caused by malware will be out with the scope of this agreement and will be chargeable.
6. Equipment where no vendor cover is in place.
7. End of life equipment will be supported on a best endeavours basis only.
8. **Tycom** will be unable to provide support on any software that is not genuine, licenced and vendor-supported.
9. Other misuse or abuse.

## Ubiquity Services Specifics

1. At **Tycom**'s discretion and where possible provide for an agreed period loan equipment in the event that a critical element of the system cannot be repaired.
2. The Customer shall notify **Tycom** in writing prior to moving equipment. **Tycom** shall be under no obligation to continue service if the system is moved without **Tycom**'s prior written approval. **Tycom** may, at the Customer's request, supervise the de-installation and re-installation of the equipment. Service obligation shall be suspended whilst the work is carried out and re-installed following system acceptance by **Tycom** at the new location. A charge will be made for this work in accordance with the terms and rates set out in this document.
3. Equipment out with the initial warranty period that are covered by this support agreement and are ultimately deemed, after every effort has been made, as beyond economical repair would need to be replaced by the Customer. If such an occasion occurs **Tycom** will provide all help and assistance and loan equipment where possible until such times as a replacement item is purchased and installed.
4. Under this agreement, a User is defined as any active non-system account.

## Incident Logging

An Incident can be logged by the client by one of the following methods:

1. A Phone Call is made to 01224 321545
2. An email is sent to [service.desk@tycom.co.uk](mailto:service.desk@tycom.co.uk)
3. Through our website at [www.tycom.co.uk](http://www.tycom.co.uk)
4. A fax is sent to 01224 311165

No Incident shall be considered logged until a call number has been issued to the Customer.

## Fair Usage

While there is no limit to the number of Incidents logged, **Tycom** will be under no obligation to prioritise Incidents from the Customer when such a level is reached as to be disruptive to other clients or be otherwise excessive.