



Nh GrAfIKs Standard Terms and Conditions

All software, services and support provided by Nh GrAfIKs and orders for software, services and support accepted by Nh GrAfIKs are subject to the following express terms and conditions ("Terms and Conditions") and no additions or variations thereof shall apply unless expressly agreed in writing by Nh GrAfIKs.

Definitions

The following definitions apply to all of these terms and conditions.

"Contract" means the agreement between Nh GrAfIKs and the Customer which is subject to the Terms and Conditions.

"Customer" means the party named as such in the Contract.

"Go-live Date" means the date on which the Software is installed on the permanent internet or intranet address of the website or otherwise released for production use by the Customer.

"Product" means Equipment or Software.

"Nh GrAfIKs" means the company identified in the Contract and shall include that company's successors and assigns.

"Software" means all programs, software and media supplied to the Customer by Nh GrAfIKs, excluding any Third Party Software, either by delivering new software or releasing additional capability in existing software. The Software includes the Modified Software, data, information, know-how and technology embodied or relating thereto, which may be contained in, revealed by, or shown on any documentation, models, descriptions, forms, drawings, schedules, flow charts, magnetic tapes, discs or information retrieval devices supplied to the Customer in connection with the Contract. Each Software item may include any corrections and updates supplied by Nh GrAfIKs, but does not include subsequent versions of the Software for which a new licence would be required.

"Software Specification" means the specification of the Modified Software agreed by Nh GrAfIKs and the Customer

"Third Party Software" means any third party software supplied by Nh GrAfIKs under the Contract to the Customer that is subject to the third party software owner's licensing terms and conditions which accompany the third party software, or licensing terms and conditions that have previously been agreed in writing between the Customer and the third party software owner.

"Maintenance Release" shall mean a new release of the Software that is substantially the same as the current Software, which is issued by the software owner in order to remove known errors or otherwise improve the performance of the Software.

"Modified Software" means software that is the subject of modification by Nh GrAfIKs to meet the Software Specification.

"New Version" shall mean a release of the Software that incorporates significant new or additional functionality and features. New Versions will be the subject of a new licence.

"Nh GrAfIKs Equipment" means equipment that is not sold to the Customer, but provided to the Customer by Nh GrAfIKs in order to provide Service, Support or Equipment Maintenance.

"Supported Software" shall mean the Software or Third Party Software for which Support is provided by Nh GrAfIKs under the Contract.

"Support" shall mean the support services supplied to the Customer by Nh GrAfIKs under the Contract.

"Support Portal" shall mean the Internet web-site or email address provided to enable communication of support issues between the Customer and Nh GrAfIKs.

"Service" means the service supplied by Nh GrAfIKs under the Contract and includes services, professional services, project services, project management, system design, training and other similar activities.

Terms and Conditions of Service (April 2009)

P1. Agreement

In consideration of the obligations of the Customer in the Contract, Nh GrAfIKs agrees subject as hereinafter provided to provide the Service to the Customer.

P2. Delivery

Unless otherwise expressly agreed in writing, any delivery dates specified by Nh GrAfIKs are approximate only and time shall not be of the essence for delivery.

P3. Resources

P3.1 Nh GrAfIKs will assign appropriately qualified personnel to perform the Service and will use all reasonable endeavours to minimise changes of personnel so assigned.

P3.2 The Customer will give to Nh GrAfIKs promptly on request such information and facilities as Nh GrAfIKs reasonably requires for the provision of the Service.

P3.3 The Customer will not, without Nh GrAfIKs's written consent, use any of Nh GrAfIKs's personnel to undertake any work which in the opinion of Nh GrAfIKs is inappropriate to their qualifications and experience or any work which is not directly connected with the Service.

P4. Timescales and Progress Control

P4.1 Where the Service contains elements of project management the Customer and Nh GrAfIKs will before commencement of the Service:

i each nominate an authorised representative who will be the prime point of contact and whose decisions when committed to writing will bind the parties for the purpose of the Contract.

ii agree appropriate methods and frequency of monitoring the progress of the Service and of the fulfilment of any phases of the Contract.

P4.2 If idle time is incurred through failure of the Customer to meet its obligations, Nh GrAfIKs may revise any scheduled date for completion of any part of the Service and/or by giving seven days written notice suspend the Service and, in any event, the provisions of clause P5.5 shall apply.

P5. Charges and Payments

- P5.1 The Customer will pay the Initial Charge and Annual or Monthly Charge ("the Charges") for the Service in accordance with the Contract.
- P5.2 Unless otherwise agreed, the Initial Charge is due on the Go-live Date. Payments for Annual and Monthly Charges are due in advance of the provision of the Service.
- P5.3 The charges shown on the Contract, unless otherwise stated, are for work performed between the hours of 0900 and 1700 daily, excluding Saturdays, Sundays and English public holidays. Any Service provided outside such hours will incur additional charges, including travelling time if applicable, in accordance with Nh GrAfiks's standard rates.
- P5.4 Nh GrAfiks reserves the right to make an additional charge for any work done by Nh GrAfiks which is attributable to the Customer's failure to observe its obligations or not covered by the selected Service.
- P5.5 If the provision of the Service is delayed other than through the fault of Nh GrAfiks, or if the Service is postponed or cancelled by the Customer:
- i Nh GrAfiks will be entitled to payment by the Customer in respect of idle time incurred as a result of such delay and/or wasted time incurred owing to the provision by the Customer of incorrect information.
 - ii any scheduled date for the completion of any part of the Service will be deferred by a reasonable period which shall be not less than the period of such delay.
 - iii Nh GrAfiks will be entitled to payment by the Customer in respect of idle time of resources that could not reasonably be rescheduled owing to the Customer postponing or cancelling the Service.
- P5.6 All charges for parts, components and materials, and for storage media, stationery and other supplies, and for travel and subsistence are separately payable by the Customer, and together with all other charges due from the Customer howsoever arising under the Contract, shall be payable within 14 days from the date of the invoice(s).
- P5.7 Nh GrAfiks may, from time to time, modify the charges for Services in line with the then current prices of Nh GrAfiks and its suppliers.

P6. Customer Covenants

- P6.1 The Customer agrees to perform in a timely and professional manner all its obligations set out in the Contract or any document incorporated into the Contract or any subsequent obligations in relation to the Contract that have been agreed between the parties and committed to writing.
- P6.2 The Customer undertakes not to ask Nh GrAfiks or Nh GrAfiks's personnel to install or otherwise carry out an activity with any unlicensed software, and the Customer hereby agrees to indemnify and hold harmless Nh GrAfiks and Nh GrAfiks's employees against any claims relating to the said installation or activity.

P7. Acceptance

- P7.1 Any specification or other document which is to be produced by Nh GrAfiks as part of the Service and which requires the agreement of the Customer shall be subject to a signature of acceptance by the Customer. Nh GrAfiks will notify the Customer when any such document is available for acceptance. If the Customer's agreement thereto is unreasonably delayed or withheld, then the provisions of Clause P7.2 will apply.
- P7.2 Any part of the Service will be deemed to have been accepted by the Customer when the acceptance criteria thereafter, as set out in a schedule to the Contract, have been satisfied. In the absence of such criteria, acceptance by the Customer will be deemed to have occurred on completion by Nh GrAfiks of that part of the Service.
- P7.3 Following acceptance or deemed acceptance of the Service, Nh GrAfiks will have no liability for the consequences of any use which the Customer makes of anything delivered by Nh GrAfiks as part of the Service other than as set out in clause P8.1.

P8. Warranty

- P8.1 Nh GrAfiks warrants that the Service will be carried out with reasonable skill and care and that the Service will conform in all material respects to their specification, provided that Nh GrAfiks will not be liable for breach of any such warranty unless the breach is reported to Nh GrAfiks within three months after completion of the Service and, having been given reasonable opportunity by the Customer to rectify any such breach, Nh GrAfiks fails to do so promptly and without additional charge to the Customer.
- P8.2 For the avoidance of doubt and subject always to clause P8.1 where the provision of a Service involves the supply of any item of software, the Customer will not be entitled to error correction, updates and amendments to such items of software under this Contract after the date of acceptance unless otherwise agreed in the Contract.
- P8.3 Nh GrAfiks's obligations under the above warranty shall be its sole liability and it shall have no other liability whatsoever whether in contract, tort or otherwise as regards the quality or fitness for purpose of the Service and all other representations, conditions, warranties and terms in respect thereof whether express or implied, statutory or otherwise are hereby excluded save to the extent that the same are not capable of exclusion at law.
- P8.4 Upgrades from 3rd party suppliers will be available as and when the 3rd party makes them available, and at a cost set by the 3rd party. The time required to install the update will be charged at normal Nh GrAfiks rates in force at the time.

P9. Term

Where the Service is provided on a continuing basis, unless otherwise stated in the Contract and will be provided for a minimum of 12 months from the Go-live Date and shall continue thereafter until terminated by no less than 30 days written notice by either party, such notice to expire no earlier than at the end of the minimum period, or as otherwise terminated in accordance with the Terms and Conditions.

P10. Sub-licensing

The Customer is hereby licensed to use for the purpose for which it is supplied any material, other than software, delivered by Nh GrAfiks as part of the Service but is not, unless otherwise agreed in writing, entitled to sub-license the use of such material.

P11. Additional Schedules

In some cases additional schedules (for example detailing acceptance criterion, customer responsibilities) that specifically refer to the Contract may be agreed and shall be incorporated into the Contract upon signature by both parties.

Terms and Conditions of Support (April 2009).

H1. Agreement

In consideration of the obligations of the Customer in the Contract Nh GrAfiks agrees, subject as hereinafter provided, to provide Support to the Customer.

H2. Services Included

Unless otherwise stated in the Contract, the Support will be provided by Nh GrAfiks via the Support Portal during the hours of 9.00 am to 5.00 pm Monday to Friday inclusive (excluding English public holidays), and will comprise the following:

- I Where the Support comprises the support of Nh GrAfiks owned software, the identification and correction or errors or malfunctions in the Supported Software.
- ii Reporting verified faults in third party Supported Software to the Supported Software supplier/vendor and making available to the Customer any subsequent modification.
- iii General advice in connection with the normal and intended use and operation of the Supported Software.
- iv Explanations and instructions in relation to problems encountered by the Customer during the normal and intended use of the Supported Software
- v Any improvements or changes to the Supported Software which Nh GrAfiks considers to be desirable or necessary for the intended use and operation of the Supported Software will be made available to the Customer.

H3. Services not Included

H3.1 The Support provided does not include the following:

- i The making of any changes or alterations to the Supported Software other than those referred to in clause H2.
- ii The correction of any errors or malfunctions in the Supported Software after the Customer has permitted a third party access to the Supported Software for maintenance or support purposes, or caused by the operator error, equipment faults or defects in software (including operating system or utility software) which is not supported by Nh GrAfiks.
- iii The installation and implementation of the Supported Software or the training of the Customer's staff in the use of the Supported Software.
- iv It is specifically agreed that data is the Customer's responsibility and, subject to the Customer making regular and frequent back-up copies of the data, Nh GrAfiks will take reasonable steps to recover any lost or corrupted data arising from Nh GrAfiks's negligence.
- v It is specifically agreed that, unless virus protection is being provided by Nh GrAfiks under the Contract, the Customer is responsible for virus protection and Nh GrAfiks will take all reasonable steps to prevent the introduction of viruses through its provision of the Support.
- vi The installation of New Versions or Maintenance Releases.
- vii The provision of support for software that is not correctly licensed.

H3.2 Nh GrAfiks reserves the right not to provide Support for releases of the Supported Software older than the then current and immediately preceding release or as otherwise defined by the Supported Software owners.

H3.3 The parties agree that if Nh GrAfiks provides any of the Support set out in clause H3.1 above the Customer shall be charged separately for the provision of such services at Nh GrAfiks's then prevailing rates for such services.

H4. Charges

H4.1 All charges for Support are as stated in the Contract and are due for payment in advance. No Support will be provided until payment has been received by Nh GrAfiks.

H4.2 Nh GrAfiks will give the Customer prior written notice if the cost of Support is to increase.

H4.3 Any software support over and above that stated in the Contract shall be subject to additional charge at Nh GrAfiks's then prevailing rate.

H4.4 Nh GrAfiks reserves the right to make a charge for any work done by Nh GrAfiks which is attributable to the Customer's failure to observe its obligations under the Contract.

H4.5 All charges for parts, components and materials, and for magnetic media, stationery and other supplies, and for travel and subsistence are separately payable by the Customer, and together with all other charges due from the Customer howsoever arising under the Contract, shall be payable within 14 days from the date of the invoice(s).

H4.6 Any excess bandwidth charge detailed in any published price list shall be paid by the customer to Nh GrAfiks in advance covering the period to the period to the next payment date of the original bandwidth supply rate and thereafter simultaneously with the original bandwidth supply payment.

H4.7 Nh GrAfiks shall supply details of excess bandwidth usage to the Customer. Itemised details of excess bandwidth usage and any relevant charges may be made available to the Customer if ordered in advance and Nh GrAfiks reserves the right to make an additional charge for this service.

H5. Term

Unless otherwise stated in the Contract, Support shall be provided for a minimum period of 12 months from the Go-live Date and shall continue thereafter until terminated by no less than 3 months written notice by either party, such notice to expire no earlier than at the end of the minimum period, or as otherwise terminated in accordance with the Terms and Conditions.

H6. Customer covenants

H6.1 The Customer agrees:

- i to use and operate the Supported Software and maintain the Supported Software environment in accordance with the Supported Software supplier's and Nh GrAfiks's recommendations and to comply with its obligations in the licences under which it uses the Supported Software.

- ii to nominate and suitably train a number of persons, as agreed with Nh GrAfIKs, and in any case no less than one person in the Customer's organisation to liaise with Nh GrAfIKs with respect to the delivery of the Support.
- iii to provide Nh GrAfIKs with information and up-to-date listings and printouts which Nh GrAfIKs reasonably requires for the purpose of carrying out its obligations under this Contract.
- iv to keep a daily operations log of Supported Software faults in a format agreed with Nh GrAfIKs and to make the log available to Nh GrAfIKs for inspection at any reasonable time.
- v to operate the Supported Software in a professional and prudent manner and in accordance with any operating manuals supplied with the Supported Software.
- vi to allow Nh GrAfIKs (at the Customer's expense) reasonable access time on the Customer's computer equipment (including by communications link where appropriate) for the purpose of carrying out its obligations under this Contract.
- vii to maintain and keep safe its back-up copies of the Supported Software (if applicable).
- viii to implement forthwith all modifications, maintenance fixes and free of charge Maintenance Releases that Nh GrAfIKs advises should be implemented and which are available to the Customer.

H7. Warranty

- H7.1 Nh GrAfIKs warrants that the Support will be carried out with reasonable skill and care using (where appropriate) materials of satisfactory quality.
- H7.2 The warranty mentioned above shall not apply:
 - i to any item of Supported Software modified by the Customer or any third party other than in accordance with Nh GrAfIKs's instructions.
 - ii where any environmental specification in writing for the operation of the Supported Software is not maintained.
 - iii to any loss, damage or destruction of or to the Supported Software.
 - iv to any defect or malfunction caused by negligence, neglect or misuse.
- H7.3 Nh GrAfIKs's obligations under this Contract do not constitute a guarantee that the Customer shall enjoy continuous error-free use of the Supported Software and Nh GrAfIKs shall not be liable to the Customer for any losses or expenses incurred by the Customer due to the Supported Software malfunctioning or being inoperable provided that Nh GrAfIKs carries out its obligations under the Contract within a reasonable period of being requested by the Customer to do so.
- H7.4 The Customer shall take full responsibility for all data generated and handled by the Supported Software. In the event of an error or bug being found in the Supported Software, the responsibility for managing any incorrect data generated as a result of the said error or bug shall remain with the Customer and Nh GrAfIKs shall have no responsibility to the Customer in respect of the same.
- H7.5 Nh GrAfIKs's obligations under the above warranty shall be its sole liability and it shall have no other liability whatsoever whether in contract, tort or otherwise as regards the quality or fitness for purpose of the Support or the Supported Software and all other representations, conditions, warranties and terms in respect thereof whether express or implied, statutory or otherwise are hereby excluded save to the extent that the same are not capable of exclusion at law.

General (April 2009)

G1. Value Added Tax

All charges are quoted exclusive of Value Added Tax which is payable in accordance with the then current legislation.

G2. Late Payment

Nh GrAfIKs reserves the right to charge an administration fee, from the date on which the account becomes due until the date of payment before, as well as after, judgement. In the event of late payment Nh GrAfIKs's obligations under the Contract will be suspended until payment has been made in full.

G3. Contract Change Control

- G3.1 The Customer may at any time request and Nh GrAfIKs may at any time recommend changes in the Service, Support or Equipment Maintenance.
- G3.2 Neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold or delay its agreement to such request.
- G3.3 Nh GrAfIKs will advise the Customer of the likely impact of any requested or recommended change on the price and timescales for the service.
- G3.4 The recipient party will respond in writing to, or both parties will meet to discuss, any request or recommended change as soon as practicable, and in any event within four weeks following receipt of the request or recommendation.
- G3.5 Until such time as any change is formally agreed, Nh GrAfIKs will, unless otherwise agreed, continue to perform and to be paid for the service as if such change had not been requested or recommended.
- G3.6 Any agreement to a requested or recommended change will become valid as an amendment to the Contract only when recorded in writing and signed by authorised representatives of both parties.

G4. Confidentiality

- G4.1 All designs, design studies, surveys, project plans, implementation plans, customised specifications, system configurations, user guidance, training hand outs and other similar information, and any software or materials which has been, or will be supplied to the Customer by Nh GrAfIKs in connection with the Contract, or performance thereof, remains the property of Nh GrAfIKs or its suppliers and consists of confidential and proprietary data whose disclosure to or use by third parties may be damaging.
- G4.2 The Customer agrees to hold all information, software and materials described in clause G4.1 in the strictest confidence and not to disclose or make available the said information, software or materials to any third party or to its employees except in confidence and then only as is necessary to facilitate performance of the Contract.

G5. Employment

- G5.1 No master and servant, partnership or agency relationship will be deemed to exist between the Customer and any Nh GrAfiks personnel.
- G5.2 Until six months after completion of the Service, Support or Equipment Maintenance or termination of the Contract, whichever is the later, neither party will solicit the employment or services of any personnel of the other party who has been engaged in connection with the Contract. Liquidated damages for breach of this provision will be equal to the gross salary or fees of that person for the first six months of his/her new employment or contract. The parties agree that such sum is a genuine pre-estimate of the costs which the party previously employing or contracting with the individual will incur in finding and training a replacement for that person.

G6. Nh GrAfiks Equipment

- Where Nh GrAfiks provides items of Nh GrAfiks Equipment the following shall apply to those items:
- i the Nh GrAfiks Equipment will remain Nh GrAfiks's, or its supplier's property at all times; and
 - ii the Customer will not interfere with or modify the Nh GrAfiks Equipment and will not remove or alter any identification mark on the Equipment showing that it is owned by Nh GrAfiks or one of its suppliers; and
 - iii when the ownership of the Nh GrAfiks Equipment is relevant, the Customer will make clear to third parties that the Nh GrAfiks Equipment is Nh GrAfiks's or one of its supplier's property; and
 - iv the Customer is responsible at all times for the safe use and safe custody of the Nh GrAfiks Equipment whilst it is in the Customer's custody, including procuring and maintaining an appropriate insurance policy; and
 - v the Customer must keep the Nh GrAfiks Equipment at the site or sites in accordance with the Nh GrAfiks's instructions and shall return it to Nh GrAfiks immediately upon request; and
 - vi the Customer must permit Nh GrAfiks or its agent to inspect or test the Nh GrAfiks Equipment at the site or remotely at such times as may be agreed between Nh GrAfiks and the Customer, such agreement not to be unreasonably withheld or delayed; and
 - vii the Customer must not attempt to let, sell, charge or otherwise deal with the Nh GrAfiks Equipment; and
 - viii the Customer must not permit or suffer any execution or distress to be levied or used against the Nh GrAfiks Equipment or permit or suffer the Nh GrAfiks Equipment to be seized under or affected by any distress, execution or other legal process.

G7. Limit of liability

- G7.1 Nh GrAfiks and the Customer agree to indemnify each other against any liability arising in respect of personal injury (including death) to any person which results from the negligence of the indemnifying party, its employees, agents or sub-contractors.
- G7.2 Nh GrAfiks and the Customer agree to indemnify each other against any loss of, or damage to, physical property to the extent caused by any negligence of the indemnifying party, its employees, agents or subcontractors in connection with the performance of their duties under the Contract provided that each party's total liability under this clause G7.2 shall be limited to 120% of fees charged by Nh GrAfiks for the project or service.
- G7.3 Notwithstanding anything to the contrary in the Contract, but subject to clause G7.1, neither Nh GrAfiks nor the Customer shall be liable to the other for any of the following (whether or not the party being claimed against was advised of, or knew of, the possibility of such losses) whether arising from negligence, breach of contract or otherwise:
- i any indirect, special or consequential losses;
 - ii any loss of business, data, profits, revenue, goodwill, use, or anticipated savings;
 - iii any damage suffered by the other party as a result of an action brought by a third party arising from any use, or inability to use, any software or item supplied under this Contract or from any breach of the Contract; or
 - iv loss or damage to the other party's, or any third party's, data or records.
- G7.4 Except where liability arises under clauses G7.1 or G7.2, Nh GrAfiks's entire liability to the Customer for all claims made in respect of or in connection with the Contract whether in contract, for misrepresentation (other than fraudulent misrepresentation), tort (including, but not limited to, negligence), intellectual property infringement or under statute and however and whenever arising shall not exceed the sum total of the fees paid by and due from the Customer to Nh GrAfiks in the first year under the Contract.
- G7.5 Nh GrAfiks's prices are determined on the basis of the warranties as stated in clauses H7 and the limits of liability as stated in clause G7.

G8. Patents, design and copyright

- G8.1 Nh GrAfiks and its suppliers retain all intellectual property rights, interests and title in and over their own products and systems (including, without limit, the Software) and all trade secrets, copyright, patent rights, ideas and any other intellectual property rights in relation thereto remain the exclusive property of Nh GrAfiks or its Suppliers. For the avoidance of doubt, at no time shall any rights, interests or title in any intellectual property in the Software pass to the Customer.
- G8.2 Subject to clause G7.4, Nh GrAfiks shall indemnify the Customer against any and all actions or claims incurred by the Customer arising out of any actual or alleged infringement of any patent, copyright or trade secret in respect of the Software, the Equipment, Customer data or the output of any Service supplied under the Contract provided that:-
- i the action and/or claim does not arise as a result of the unauthorised modification, alteration or adaptation of the Software, the Equipment or the output of the Service by the Customer; and
 - ii the action and/or claim does not arise as a result of the use of the Software, the Equipment or the output of the Service in combination with any software or equipment not supplied or approved by Nh GrAfiks; and
 - iii the Customer shall notify Nh GrAfiks immediately of any claim or demand made or action brought against the Customer for infringement or alleged infringement of any patent, copyright or trade secret in respect of the Software, the Equipment or the output of any Service and shall not make any comment or admission to any third party in respect thereof; and
 - iv Nh GrAfiks shall have conduct of all proceedings or negotiations relating to such allegations or claims and shall deal with the same as it sees fit in its absolute discretion; and

- v The Customer shall provide all reasonable assistance to Nh GrAfiks in relation to the conduct of such litigation and/or negotiations.
- G8.3 In the event of any claim against the Customer that the use of Third Party Software infringes the intellectual property rights of any third party, Nh GrAfiks shall use all reasonable endeavours to enforce at the Customer's expense, Nh GrAfiks's rights (if any) against the relevant third party. Subject to the foregoing, Nh GrAfiks shall have no further liability in respect of such infringement or alleged infringement.
- G9. Data Protection**
- G9.1 Each party shall ensure that in the performance of its obligations under the Contract it complies at all times with the Data Protection Act 1998 ("the Act").
- G9.2 The Customer hereby authorises Nh GrAfiks to process any of its data (including any personal data as defined in the Act) only to the extent necessary and solely for the purpose of carrying out its obligations under the Contract, including without limitation, when Nh GrAfiks is resolving a support or maintenance problem or testing a new release for the Customer. Immediately after such use, Nh GrAfiks agrees that it shall destroy any copy data created.
- G9.3 The Customer will satisfy itself that Nh GrAfiks is maintaining in place, having regard to the state of technological development and costs, appropriate measures to protect the security and integrity of any such personal data which it processes, and inform Nh GrAfiks of any shortcomings in that regard.
- G10. Export**
- G10.1 If the Customer wishes to export any Product from the country of initial supply, it is the Customer's responsibility to obtain all such consents and licences as may from time to time be required by English Law and the US Export Administration Regulations or under laws of any other country affecting or regulating such export.
- G10.2 No Product shall be exported if the Customer has any grounds for suspecting that such Product is intended to be used for any purpose related to nuclear, chemical or biological weapons, or missile technology.
- G11. Termination**
- G11.1 Nh GrAfiks may suspend its obligations under any contract it may have with the Customer for Support or Equipment Maintenance or may terminate the Customer's licence to use the Software and the Contract at any time upon written notice to the Customer if the Customer fails to pay any fees or charges due under the Contract for 14 days after the due date for payment.
- G11.2 The Contract (including, if applicable and without limit, any licence to use Software under the Contract) shall terminate automatically and without notice if:
- i a petition to wind up the Customer is presented to a court or the Customer calls a meeting of creditors or passes a resolution for voluntary winding up (otherwise than for the purposes of solvent reconstruction or amalgamation), or a receiver, administrative receiver, administrator or other similar officer is appointed in respect of the Customer or any of the Customer's assets, or the Customer makes any proposal to its creditors for any composition or voluntary arrangement; or
 - ii any officer of any court or any person so entitled takes steps towards attaching, sequestering, requisitioning, or seizing any Software or any landlord takes any steps towards levying distress affecting any Software or if any Software is in fact so attached, sequestered, requisitioned, seized or distrained upon, or if the Customer does any act or thing which may affect the ownership or the rights of Nh GrAfiks in the Software or any part thereof, or
 - iii the Customer is in material breach of the Contract (other than its obligation to pay under the Contract which is addressed by clause G10.1 above) and does not rectify such breach within 30 days of receipt of a written notice from Nh GrAfiks requiring it to rectify the breach.
- G11.3 Upon termination of the Contract Nh GrAfiks shall not be liable to refund any part of any Charges or Licence Fees to the Customer and the Customer shall pay to Nh GrAfiks all sums then due by way of Charges or Licence Fees or by virtue of any other provision hereof. Termination shall not affect any other rights of Nh GrAfiks.
- G11.4 Upon termination of the Contract the Customer shall immediately deliver up to Nh GrAfiks:
- i the Software and any Third Party Software or any part thereof or any copies thereof or any related manuals and documentation, and
 - ii any Nh GrAfiks Equipment held at the Customer's premises, and
 - iii all copies of programs, manuals and documentation used by Nh GrAfiks for the purpose of providing the Service, Support or Equipment Maintenance and
 - iv any Equipment, where title to such Equipment remains with Nh GrAfiks or its suppliers.
- G11.5 In the event, the Customer fails to comply with its obligations under clause G11.4, Nh GrAfiks shall be entitled to retake possession, by entry into any premises or otherwise, of the Software the Third Party Software, manuals and related documentation.
- G12. Force Majeure**
- Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control. If such a period shall apply for a limited period of time, and it is agreed that the performance of the Contract shall continue thereafter, all previously agreed delivery dates shall be extended by no less than the length of the delay.
- G13. Assignment**
- The Customer may not assign, novate or subcontract the Contract or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of Nh GrAfiks, such consent not to be unreasonably withheld. Nh GrAfiks may assign, subcontract, novate or charge all of its rights or interests or obligations under the Contract to any third party.
- G14. General**
- G14.1 Any modifications or amendment to the Contract must be made in writing and signed by an authorised signatory of each party.
- G14.2 Any delay or failure by Nh GrAfiks to exercise any rights or remedies set out in the Contract shall not be deemed to be a waiver or relinquishment thereof.

G15. Severance

The provisions of the Contract shall be deemed to be severable and any invalidity of any provision shall not effect the validity of the remaining provisions of the Contract, and the parties shall use reasonable endeavours to agree an appropriate substitute provision.

G16. Notices

Any notices to be given under this Contract shall be in writing and served on either party at their registered office, unless either party notifies the other of a change of address for service. Service of notices must be made by facsimile transmission, in which case service shall be effective immediately upon transmission, or by first class post, in which case, service shall be effective on the second working day after posting.

G17. Entire Agreement

G17.1 The parties agree that these Terms and Conditions (together with any other terms and conditions expressly incorporated in the Contract) represent the entire agreement between the parties and supersede all other proposals, agreements, statements, representations or warranties (whether written, e-mail or oral) made by or between the parties relating to the subject matter of the Contract, and that no statements or representations made by either party have been relied upon by the other in agreeing to enter into the Contract.

G17.2 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in the Contract (or for breach of any warranty given by the other not set out or referred to) unless such statement or warranty was made or given fraudulently.

G18. Third Party Rights

The Contract shall not create any rights that shall be enforceable by anyone other than the parties to the Contract or any person to whom it is lawfully assigned.

G19. Law

Unless otherwise agreed in writing, the Contract shall be construed and interpreted in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

Expenses Recovery Policy (April 2009)**E1. Introduction**

E1.1 It is the policy of Nh GrAfiks to recover from Customers all expenses incurred in the performance of the Implementation Services provided to those Customers. Unless otherwise stated in schedule A, Nh GrAfiks will also seek to recover from the customer any incremental costs incurred by Nh GrAfiks in the provision of the Support Services, such expenses costs shall only be incurred with the prior agreement of the Customer.

E1.2 This document refers to the recovery of expenses which may be incurred in the performance of the Services in the UK only. The recovery of expenses incurred for the provision of the Services provided outside the UK, will be subject to individual negotiation and agreement.

E2. Travel

E2.1 The cost of journeys by car will be charged at a rate of £0.40 per mile measured between the consultant's home address and the Customer's office(s).

E2.2 Rail travel will be standard class and will be charged at cost.

E2.3 Taxis will only be used where other forms of transport are less cost-effective or not available.

E2.4 Parking costs will be charged at the prevailing parking meter rate (unreceipted), or normal car park charges (receipted).

E2.5 If air travel is required then, where practical, Nh GrAfiks prefers the Customer to arrange and pay for any required flights. However, if required Nh GrAfiks will arrange and pay for flights and will recharge the Customer with the actual cost of the flight. Domestic flights within the UK are all one class, however where advance booking is appropriate, it will be used to minimise the costs incurred. Air travel will always require the prior formal approval of the Customer.

E3. Accommodation

Where practical, Nh GrAfiks prefers Customers to arrange and pay for hotel accommodation. If required Nh GrAfiks will arrange and pay for hotel accommodation and will recharge the Customer the actual hotel costs. The standard and availability of the accommodation, the facilities provided and the proximity to the Customer's office(s) will influence the choice of hotel.

E4. Meals and subsistence

For a consultant working at a Customer's office, it is the policy of Nh GrAfiks to recover the cost of out of hours meals consumed, up to reasonable limits, provided a receipt is obtained. Tips will also be reimbursed up to a maximum of 15% of the bill provided that the service charge has not already been included. The cost for breakfast and dinner is reimbursed only if the provision of the Services require a consultant to stay away from home overnight, or work/travel commences before 7.00am (breakfast), or work/travel continues after 7.30pm (dinner).

Hosting Service (April 2009)

Including Application Service Provision, Website Hosting, Domain Name Registration

OPERATIVE PROVISIONS

The following terms comprise the contractual terms between Nh GrAfiks and the Customer for the supply of services by Nh GrAfiks. No other terms apply unless varied in writing by Nh GrAfiks and the Client.

- S1. **TERM.** This Agreement between the parties shall remain in effect between the parties unless otherwise cancelled or modified by either party in accordance with the terms and conditions set forth herein.
- S2. **SERVICE APPLICATION.** Nh GrAfiks reserves the right to refuse any application for subscription or service. Provision of a service to the customer shall be made as quickly as is reasonably possible. A date proposed by Nh GrAfiks as a date for start of service is an estimate only and may be liable to change. Nh GrAfiks will not be responsible for any delay in start of service beyond such a date.
- S3. **TERMINATION.** Either party may terminate this Agreement without cause upon written notice to the other party. The hosting service is an annual contract and must be cancelled no less than 30 days prior to renewal. No refunds are applicable if the contract is cancelled. Nh GrAfiks may terminate this Agreement at any time and without notice if
- if the Customer commits any breach of this Agreement including but without limitation non-payment.
 - The Customer is a company and a resolution is passed for its winding up or a petition for its liquidation is presented, or the Customer is an individual and a petition for bankruptcy is presented against it.
- Nh GrAfiks reserves the right to revoke any Customer's User ID, Internet Protocol (IP) Address or domain name mapping, following termination of this agreement. Domain name hosting and transfer requests must be made by the domain owner. Domain name transfers will not be made until all outstanding amounts have been paid by the Customer. No refund of payment will be made to the Customer upon termination of the Agreement by either Nh GrAfiks or the Customer.
- S4. **DURATION.** The contract agreed between Nh GrAfiks and the client is for a minimum of 12 months.
- S5. **RENEWAL.** If not cancelled by the customer, this Agreement shall automatically self-renew after a twelve (12) month period for an additional twelve (12) month period.
- The customer's failure to properly notify Nh GrAfiks of its objections to any of the terms and conditions set forth herein shall constitute customer's acceptance of same. This Agreement shall automatically renew itself for an additional twelve-month period unless otherwise cancelled or terminated by either party in accordance with the notice provision set forth herein. In the event this Agreement is automatically renewed, the customer agrees to be bound by the Terms and Conditions currently in effect.
- S6. **LIABILITY.** The customer agrees that Nh GrAfiks shall have no liability for the services, data or information provided including but not limited to any liability for consequential, indirect, special or incidental damages, regardless of the success or effectiveness of other remedies. The customer further agrees that Nh GrAfiks shall not be liable for any damages or losses sustained by the customer for business or other activities conducted via the hosting service including but not limited to consequential, indirect, special or incidental damages. The customer agrees that it shall not hold Nh GrAfiks liable for any loss of business, lost opportunity, consequential, indirect, special or incidental damages as a result of any interruption in service. In no event shall Nh GrAfiks liability exceed the total value paid to Nh GrAfiks by the customer.
- S7. **REPRESENTATION AND/OR WARRANTIES.** Nh GrAfiks make no representations and cannot guarantee that the customer's operation does not infringe upon any trademarks, trade names, service marks or other proprietary rights owned by a third party. The customer shall not hold Nh GrAfiks liable for any damages, injuries or losses incurred by the customer as a result of any action instituted by a third party.
- S8. **SECURITY.** Nh GrAfiks will make every reasonable effort to provide a secure environment for the application software and database. The customer understands that the Internet and other various networking communications are not secure, unless explicitly specified as such. Nh GrAfiks make no warranties of any kind, either express or implied. In no event shall Nh GrAfiks be liable for any damages or losses either consequential, indirect, special or incidental incurred by the customer. In no event shall Nh GrAfiks liability exceed the total cost of this contract between Nh GrAfiks and the customer.
- S9. **ALLOCATION OF USER ID, PASSWORD, INTERNET PROTOCOL (IP) ADDRESSES AND DOMAIN NAMES.** Nh GrAfiks shall have the right to occasionally change a Customers User ID, IP Address or Password allocated by Nh GrAfiks for the purpose of essential network maintenance, enhancement or other work deemed necessary to the operation of Nh GrAfiks Network or the Internet.

An application for the registration of a domain name cannot be treated as having been successful until the Customer has been notified by Nh GrAfiks in writing to this effect by email or otherwise.

When supplying domain name registration services, Nh GrAfiks acts only as an agent between the customer and the appropriate domain name authority and does not guarantee the service provided by the naming authority. It is the customers responsibility to adhere to the terms and conditions of the naming authority (available on request) and ensure that their domains do not infringe the rights of any third party.

Domain names will be automatically renewed unless an instruction to the contrary is received in writing not less than 15 days prior to the renewal date. Domain names cannot be cancelled after registration or renewal.

- S10. **USAGE OF THE SERVICE.** The Customer hereby agrees to:
- Not divulge their password to any third party and use all reasonable endeavours to keep the password confidential and inaccessible to third parties.

Refrain from transferring any illegal material using Nh GrAfiks network and equipment.

Refrain from sending menacing, offensive, abusive or annoying messages whilst using the service via Nh GrAfiks or any other ISP.

Refrain from using the Service to an extent or in a manner which in Nh GrAfiks's reasonable opinion is excessive, wasteful or otherwise to the detriment of Nh GrAfiks, any other customer or any other third party, including but not limited to the transmission of bulk e-mail ("spamming").

Keep Nh GrAfiks informed of any change to the Customer's address as set out overleaf and other such information as may effect the payment of charges due.

Immediately cease to use and return any Internet Protocol (IP) Addresses allocated by Nh GrAfiks to the Customer on termination of this Agreement.

Not to use or permit the usage of the service in an unlawful manner or in contradiction of published legislation and accepted regulations governing the Internet.

To include the above restrictions in all the Customer's on-selling conditions using Nh GrAfiks's service.

- S11. **SERVICE LEVELS.** Nh GrAfiks makes no warranties or representations that the service will be uninterrupted or error-free. In the event of suspension of service due to a technical fault in the network or act of God, Nh GrAfiks will use all possible endeavour to resume service with minimum delay but will not be responsible for loss by the Customer. Nh GrAfiks may suspend the service from time to time for necessary technical reasons and network upgrades provided that 12 hours notice via our service status page or email has been given to the Customer, and that the period of suspension is not more than two hours.
- S12. **EMAIL SERVICE.** Nh GrAfiks will endeavour to ensure that messages are routed accurately and promptly, but does not accept any liability for non-receipt, non-delivery or misrouting of email or any other failure of the email service.
- S13. **APPLICABLE LAWS.** The customer shall ensure that its use of the hosted applications and any service provided by Nh GrAfiks to it complies with all applicable national and local laws and regulations, including but not limited to all laws pertaining to copyright, trademark, proprietary information, intellectual property rights, defamation, and invasion of privacy. In the event that the customer violates this provision, Nh GrAfiks shall have the right to consider same a breach of this agreement by the customer, which shall entitle Nh GrAfiks to terminate the customer's service immediately without prior notice
- S14. **INTEGRITY OF INFORMATION.** The customer is solely responsible for validating the integrity of the information and data it receives or transmits using the hosting service. The customer is also responsible for ensuring adequate security back-ups of their data is taken to suit their needs.
- S15. **LEGAL ACTION.** The customer agrees to indemnify and hold Nh GrAfiks harmless in any legal action which arises as a result of the customer's use of Nh GrAfiks services, without limitation or exception including, but not limited to any action brought against the customer by a third party.
- S16. **MODIFICATION.** The terms and conditions of this Agreement may be modified at the discretion of Nh GrAfiks with 30 days notice to the customer.

VARIATION TO THESE TERMS AND CONDITIONS. Nh GrAfiks reserves the right to vary these terms and conditions as a result of changes required by its insurers, operation or administration problems, new legislation, statutory instruments, Government regulations or licences. These Conditions may not otherwise be varied or waived except by express written agreement between both parties.