

CAREnet Support - Terms and Conditions of Service

1. Definitions

In these terms and conditions, the words detailed hereunder will have the meanings assigned to them unless the context clearly indicates or requires otherwise. All service descriptions and attached documents to these terms and conditions are incorporated herein and form an integral part of these terms and conditions.

“Agreement” means the CAREnet Service Description documents, these terms and conditions and all documents attached hereto and referencing this Agreement.

"Business Day" means any UK day other than a Saturday, Sunday or bank or public holiday in the country in which the Services are provided;

“Client” means the company identified in the Service Schedule.

“Device Inventory” means the document containing a list of Equipment to be supported under the Agreement.

"Equipment" means the hardware products listed in the Device Inventory;

“Firmware” means software code embedded in non-volatile pre-programmed memory present in the system;

“Products” means Equipment and Software;

“Product Manufacturer” means the manufacturer, supplier and supporter of Products to Insight in order that Insight can supply Products and support to Client;

“Proprietary Information” means Software, documentation (including manuals) and any other information confidential to Insight or its licensors, vendors or manufacturers;

“Purchase Order” means a purchase order placed by Client with Insight for the purchase of the Services, which may be issued in writing or by e-mail.

“Reasonable Endeavours” means Insight shall endeavour to complete the Clients Support Call, however no specific service level shall apply;

“Schedule” means any document signed by the Parties from time to time, referencing this Agreement;

“Service Description” means the document setting out a description of the Services

"Service Start Date" means the date upon which the Services commence;

"Services" means the services purchased by the Client and listed in the Agreement in relation to the specified Products, subject to the exclusions in Clause 20;

"Software" means the object code version of computer programs described in this contract and shall include any related documentation. Software also means the firmware included in the Equipment;

2. Commencement Date of Agreement

This Agreement will commence on and with effect from the Service Start Date set out in this Agreement and will continue in effect until terminated according to its terms.

3. Term

The term of the provision of the Services under this Agreement will be the period stipulated in the Device Inventory commencing on the Service Start Date and ending on the Service End Date.

4. Services

4.1 Insight will provide to Client and Client will pay for the Services.

5. Charges and Payments

5.1 The charges for Services stated on the Device Inventory are those on the quotation provided and which are payable on receipt of a Purchase Order from the Client.

5.2 Charges for Services will be invoiced and must be paid by Client without deduction or set-off within 30 days of the date of invoice. The time for payment of these Charges shall be of the essence.

5.3 Insight shall be entitled to impose a late payment charge equal to the lesser of 2.5% per month (pro-rata for a portion of a month) of the overdue amount, or the maximum rate allowed by law. Client shall pay any such late payment charge on notification by Insight.

5.4 Charges for services not covered by this Agreement, services performed outside the specified periods of coverage and commercial travel and per diem expenses not included in the coverage will be invoiced separately at Insight's standard service rates.

6. Taxes

Client will pay any taxes, duties or levies (including Value Added Tax) which Insight becomes obligated to pay by virtue of this Agreement but excluding taxes based on

the net income of Insight. All charges referred to in clause 5 and in this Agreement are exclusive of Value Added Tax or similar taxes.

7. Replacement Equipment Procedure

Equipment parts, which are supplied by Insight and removed by Client or Insight, shall become the property of Cisco. Equipment parts replaced become the property of Client.

8. Client's Operational Responsibilities

8.1 Client has sole responsibility for use of the Equipment and Software, including operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines, and other procedures necessary for Client's intended use of the Equipment and Software.

8.2 Client will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Equipment and Software and that the Equipment and Software are used in accordance with applicable manuals and instructions.

8.3 Client will maintain back-up data necessary to replace critical Client data in the event of loss or damage to such data from any cause.

8.4 To enable Insight to properly provide the Services, Client will, in addition to any requirements or obligations specified in any Schedule:

8.4.1 maintain the operating environment in accordance with the Product Manufacturers specifications or specifications supplied by Insight;

8.4.2 provide adequate and clear working and storage space for use by Insight's personnel or agents near the Equipment;

8.4.3 provide Insight full access to the Software and Equipment, subject only to Client's security rules;

8.4.4 follow Insight's procedures for determining whether or not remedial service is required;

8.4.5 follow Insight's instructions for obtaining off-site maintenance and support, if applicable;

8.4.6 fully co-operate with the Insight Support Centre in the resolution of any reported fault;

8.4.7 keep such records relating to the use and performance of the Products as may reasonably be requested by Insight from time to time and ensure that Insight's personnel have access to such records at all reasonable times;

- 8.4.8 provide Insight with all reasonable assistance and information to assist Insight to provide the Services; and
 - 8.4.9 supply all communication interfaces (except those kept by Insight on Client site for use by Insight in the provision of the Services) required by Insight to enable it to provide any of the Services.
- 8.5 Client acknowledges that maintenance of Products located at Client's premises for the purposes of providing the Services are the property of and include Proprietary Information of Insight or its licensors. Client undertakes that only Insight's personnel or agents will use such materials. All Products belonging to Insight are to be returned to Insight upon termination of the Services.
- 8.6 To determine eligibility and pre-requisites for Services, Insight may require inspection, at Client expense, of Equipment which:
 - 8.6.1 has not been maintained continuously by Insight from the date of purchase or lease by Client; or
 - 8.6.2 has been relocated; or
 - 8.6.3 requires refurbishment; or
 - 8.6.4 has not been acquired from Insight.

9. Protection of Proprietary Information

9.1 Client will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use as provided in this Agreement. Client acknowledges that unauthorised disclosure of Proprietary Information may cause substantial economic loss to Insight or its licensors.

9.2 Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for Client's authorised use. Client will mark each copy, including its storage media, with all notices which appear on the original.

9.3 This Agreement contains Proprietary Information and consequently shall not be disclosed to any third party without the prior written consent of Insight provided that no consent shall be required for disclosure of this Agreement to the auditor and professional advisors of Client and employees of Client who Client deems appropriate, or to any authorities who by law are entitled thereto.

9.4 Upon termination or cancellation of any license agreement relevant to the Software, Client will at Insight's option destroy (and, in writing, certify destruction) or return to Insight all copies of the Software, the license for which has been so terminated or cancelled and any other related Proprietary Information in Client's possession (including Proprietary Information incorporated in other software or writings).

9.5 Client will inform its auditors, professional advisers and employees of their obligations under this clause 9 and instruct them so as to ensure such obligations are met.

9.6 This clause 9 will survive termination or cancellation of this Agreement.

9.7 This Agreement does not transfer to Client title to any intellectual property contained in any Software, documentation or Proprietary Information.

10. Sub-Contractors

Insight shall have the right to sub-contract to such persons or entities as Insight in its reasonable discretion considers necessary to enable Insight to fulfil its obligations under this Agreement. Insight shall be liable for any breach of this Agreement caused by any sub-contractor.

11. Warranties and Disclaimers

11.1 Insight warrants that:

11.1.1 it has full capacity and all necessary consents to enter into this Agreement; the Services will be performed by appropriately experienced and suitably qualified personnel in a proper and professional manner, in accordance with good industry practice and its own established internal procedures;

11.1.2 it will observe all statutory health and safety regulations currently in force and any additional safety regulations imposed by the Client over its premises provided that such regulations are made available to Insight and its agents;

11.1.3 Warranties for replacement parts are limited to the warranty applicable to the original part replaced and will in no event extend the warranty period or conditions that applied to the original part.

11.2 Because not all errors in Software can or need be corrected, Insight does not warrant that all Software defects will be corrected. Similarly, Insight does not warrant that the functions contained in the Software will meet Client's requirements or that the Software will operate in all combinations selected for use by Client.

11.3 Services whether provided during any applicable warranty period in relation to the Products or thereafter, do not cover repair or damage attributable to any matters or events referred to in clause 20.

11.4 The warranty period for the Products will start on the date on which the Product Manufacturers warranty period starts and shall be limited to the Product Manufacturers warranty.

11.5 Except as expressly stated in this agreement, Insight gives no warranties, express or implied, by operation of law or otherwise. Without derogating from the generality of the foregoing, the warranties of "fitness for a particular purpose" and "merchantability" are excluded. Any warranties given by Insight extend solely to the Client.

11.6 All risk of loss or damage to Equipment and Software will pass to Client upon delivery to Client's site.

12. Alterations, attachments and relocation of products

12.1 Client will give Insight prior written notice of any proposed alterations or attachments to Equipment. Insight has no obligation to provide Services for Equipment and Software which has been altered. Should Insight agree to maintain, support or correct altered Equipment, Insight may impose additional charges.

12.2 Insight is not responsible for any malfunction, non-performance or degradation of performance of Equipment and Software, caused by or resulting directly or indirectly from any alteration or attachment not approved in writing by Insight. Client will be solely responsible for resulting infringement, personal injury or damage to property and Software.

12.3 For purposes of this Agreement, "alterations" includes, but is not limited to, the incorporation of components, boards and sub-assemblies which are not supplied by Insight into Equipment, as well as modifications to Software. "Attachments" includes, but is not limited to, any equipment, components or devices which are not supplied by Insight which are connected to Equipment, components or devices supplied by Insight.

12.4 Client will be responsible for any relocation of Equipment. Client must give Insight thirty (30) days written notice prior to relocating any Equipment. Equipment that is relocated may be subject to additional charges and modifications of response times.

12.5 Equipment moved may continue to be serviced under this Agreement, at the option of Insight, subject to Client agreement to adjusted charges and response times.

13. Limitation of Liability

13.1 Insight's maximum liability for any single or a number of claims arising out of the performance of this Agreement will not exceed an amount equal to the amount paid to Insight by Client in the 12 (twelve) months preceding the date on which the cause of action arose, in respect of the event giving rise to such claim.

13.2 In no event will Insight be liable whether claimed in breach of contract, tort or under statute for:

13.2.1 any incidental, indirect, special, punitive or consequential damages or loss, including, but not limited to, loss of use, revenues, profits or savings; or

13.2.2 claims, demands or actions against Client by any person, or payments made by or due from Client to third parties; or

13.2.3 loss of or damage to Client data from any cause; or

13.2.4 loss of funds contained in, dispensed by or associated with the Equipment or Software.

13.3 The liability of Insight shall not be limited where a cause of action arises from any of the following:

13.3.1 fraud, fraudulent misrepresentation or the death of, or personal injury to, any person caused by negligence.

14. Termination, Suspension and Cancellation

14.1 Insight may suspend Services on written notice to Client if:

14.1.1 any payment under this Agreement is overdue by more than 10 days;
or

14.1.2 any applicable site configuration falls below the minimum configuration required by Insight.

14.2 In the event that any Products become obsolete and are no longer supported by the Products Manufacturer or licensor therefore (collectively referred to as "Obsolete Products") Insight shall be entitled to terminate this Agreement in relation to such Obsolete Products on 90 days prior written notice to Client. In this event:

14.2.1 this Agreement shall remain of full force and effect in respect of Products which are not obsolete;

14.2.2 if Client has paid fees and charges in advance in respect of Obsolete Products, Client's account will be credited pro-rata for the period following termination.

14.3 Without prejudice to other remedies available to it in terms of this Agreement, Insight may cancel this Agreement for default if Client fails to:

14.3.1 make any arrear payment within 10 days; or

14.3.2 cure any other default within 30 days as the case may be, of receipt of written notice calling upon Client to make payment or remedy the default in question.

14.4 Insight may terminate Services on 30 days prior written notice if Insight determines that Client's Software modification or failure to install a revision or update will interfere with the provision of such Services.

14.5 Either Party may forthwith terminate this Agreement by giving written notice to the other if the other Party become insolvent or bankrupt or enters into any arrangement for the protection of its creditors or goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that Party under this Agreement).

14.6 Termination or cancellation of this Agreement will not affect any rights or duties arising under it with respect to Proprietary Information or payment of charges.

15. Notices

15.1 All notices required by this Agreement to be given to either Party will be sent to its address as provided on the cover page of this Agreement.

15.2 Notices shall be sent by registered mail or delivered by hand or sent by facsimile and shall be deemed to have been received on the date of delivery or transmission (as the case may be) if same takes place during normal business hours, or if not, on the next following business day, in the case of hand delivery or facsimile transmission, or in the case of forwarding by registered mail, on the 3rd day after posting.

16. Force Majeure

16.1 Neither party will be liable for failure to fulfil its obligations when due to causes beyond its reasonable control including, without limitation, the failure or delay of any supplier, Acts of God, strikes or lock outs. ("Force Majeure") If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

16.2 Neither party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to the other, by reason of any delay in performance, or the non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance of that obligation is due to any Force Majeure of which it has notified the other party and the time for performance shall be extended accordingly. If the performance by either party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of thirty days, the other party shall be entitled to terminate this Agreement by giving written notice to the party so affected, whereupon all money due up to the point of termination under this Agreement shall be paid immediately, and in particular Client shall pay to Insight all arrears of payment.

17. Governing Law

The laws of England will govern this Agreement and the Parties accept the non-exclusive jurisdiction of the courts of England.

18. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The terms and conditions of this Agreement will supersede all other terms and conditions submitted by Client, and all and any written and oral communications between the parties.

19. Dispute Resolution

In the event of any dispute or difference arising between the parties hereof relating to or arising out of this Agreement including the implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the parties shall forthwith meet to attempt to settle such dispute or difference within a period of 14 (fourteen) days. Thereafter, all disputes shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts. The provisions of this clause shall continue to be binding on the parties, notwithstanding any termination or cancellation of this Agreement.

20. Exclusions

20.1 In addition to any exclusion set out in any CAREnet Service Description documents or other documents incorporated into this Agreement, Services to be provided do not include the provision of services, nor repairs or replacements necessitated by or related to:

- 20.1.1 damage caused by accident, fire, water, lightning, power surges or other act of God;
- 20.1.2 damage caused by riots, civil disorder, acts of violence, sabotage or similar acts;
- 20.1.3 damage caused by abnormal operating conditions such as high or low temperatures or humidity or dust levels which are beyond the published environmental specifications of the Product Manufacturer as provided by Insight;
- 20.1.4. the connection of ancillary equipment, not supplied by Insight, or not approved by the Product Manufacturer;
- 20.1.5 the negligent use, abuse or misuse of Products;
- 20.1.6 damage during any transportation of Products not carried out by Insight;
- 20.1.7 electrical work, not performed by Insight;
- 20.1.8 causes external to the Equipment such as failure or fluctuation of electrical power;
- 20.1.9 products that have become unserviceable or obsolete;
- the relocation of Products;
- 20.1.10 modifications, repairs or replacements or attempted modifications, repairs or replacements not performed by Insight or not approved by Insight in writing prior to such modifications, repairs or replacements being performed or attempted by any other party, including Client;
- 20.1.11 the refurbishment of any Products;
- 20.1.12 the restoration of lost data from any Products, or equipment connected to Products;
- 20.1.13 the provision of any accessories or consumables; and
- 20.1.14 any changes or modifications to Products which are required as a consequence of any technical or regulatory changes introduced by the appropriate regulatory authorities.

21. Export Restrictions

The Client agrees to abide by the US laws and regulations governing use, export and re-export and transfer of Equipment and Software. The Client will obtain all required US and/or local authorisations, permits or licences.

22. Software

All software is provided subject to any accompanying End User License Agreement and the terms thereof. The Client hereby agrees to be bound by the Software Vendors' End User License Agreement governing the use of such software, a copy of which is either attached hereto, or otherwise available upon request.

23. General

23.1 Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.

23.2 Insight may cede its rights under this Agreement including, without limitation, the right to receive payments, without Client's consent. Insight will not assign its obligations under this Agreement without Client's prior written consent, which consent shall not be withheld unreasonably. Client will not cede, assign or transfer its rights or obligations under this Agreement without prior written consent of Insight, which consent shall not be withheld unreasonably.

23.3 This Agreement may be modified or added to only by a written addendum signed by a duly authorised representative of each party.

23.4 Each clause and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Agreement will remain in full force and effect.

23.5 In the event of any conflict between the terms and conditions of this Agreement and those appearing in any other documents relating to the provision of the Services to the Client including the Client's own documentation, the terms and conditions of this Agreement shall prevail, unless expressly stated otherwise.