

HERITAGE OPERATIONS PROCESSING LIMITED

TERMS AND CONDITIONS OF SUPPORT **FOR ADVANCED HOPS MEMBERS**

CONTENTS

No.	Topic	Page
1.	Interpretation	1
2.	Term	2
3.	Application of conditions	2
4.	Effect of Order Form	2
5.	Supplier's obligations	3
6.	Client's obligations	3
7.	Charges and payment	3
8.	Intellectual Property Rights	4
9.	Confidentiality and Supplier's property	5
10.	Limitation of liability	5
11.	Termination	6
12.	Force majeure	7
13.	Waiver	8
14.	Rights and remedies	8
15.	Severance	8
16.	Entire agreement	8
17.	Assignment	8
18.	No partnership or agency	8
19.	Third party rights	9
20.	Notices	9
21.	Governing law and Jurisdiction	9
	Schedule 1 - Service level agreement	10

Update 27/01/2021. Updated text shown **thus**.

1. Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1. Definitions:

Advanced HOPS	A level of subscription to HOPS that entitles the Client to receive Support Services.
Contract	means the legally binding contract between the Client and Supplier for the Support Services in accordance with these conditions.
Client	the organisation that has requested to make use of HOPS services.
Commencement Date	the date at which the Contract is entered into between the Supplier and the Client.
Deliverables	all products and materials developed by the Supplier in relation to the Support Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).
Monthly / Annual Fee	the sum agreed between the Supplier and Client payable to the Supplier.
Software	Heritage Operations Processing System (HOPS).
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer Software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Order Form	the Client's order for the supply of the Support Services, as set out in the Client's order form, email, letter or other form.
Support Services	the service to be provided by the Supplier under the contract as described in Schedule 1.
Supplier	means Heritage Operations Processing Ltd, a private limited company incorporated in England and Wales with company number 07311445, whose registered address is 31a Charnham Street, Hungerford, Berkshire, England, RG17 0EJ and correspondence

address is Unit 3, The Cider Warehouse, Bridge Court,
Totnes, Devon, TQ9 5DB.

- 1.2. Condition, Schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. A reference to **writing** or **written** includes email, but not fax.
- 1.9. References to conditions, clauses and Schedules are to the conditions, clauses and Schedules of the Contract and references to paragraphs are to paragraphs of the relevant Schedule.

2. Term

This Contract shall remain in force from and including the Commencement Date and shall continue until either party to this Contract gives to the other party not less than one month's written notice to terminate.

3. Application of conditions

- 3.1. These conditions shall:
 - 3.1.1. apply to and be incorporated in the Contract; and
 - 3.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's Order Form, **purchase order**, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 3.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

4. Effect of Order Form

The Client's Order Form constitutes an offer by the Client to purchase the Support Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the Order Form by the Supplier, or the Supplier's commencement or execution of work pursuant to the Order Form, shall establish a contract for the supply and purchase of those Support Services on these conditions. The Client's standard terms and conditions (if any) attached to, enclosed with, or

referred to in, the Order Form shall not govern the Contract.

5. Supplier's obligations

- 5.1. The Supplier shall use reasonable endeavours to:
 - 5.1.1. Provide support to the Client in the operation of Software;
 - 5.1.2. Provide support to the Client in the case of bugs or malfunction of Software;
 - 5.1.3. Respond to requests for Support Services within the timescales stated in Schedule 1;
 - 5.1.4. Make available to the Client all previously paid-for and future releases of Software which are included for **Advanced HOPS members**.

6. Client's obligations

- 6.1. The Client shall:
 - 6.1.1. provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
 - 6.1.2. be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
 - 6.1.3. acknowledge that there may be a delay in providing a Resolution to a Support Request if the Supplier has received a number of requests simultaneously;
 - 6.1.4. acknowledge that the Supplier provides the Software as a framework to the Client and that any data entered into the Software is the sole responsibility of the Client; and
 - 6.1.5. acknowledge that the Supplier will only provide support during the term of this Contract in accordance with clause 2 and that the Client shall not be entitled to any future support or software releases or access to paid-for components of the system following termination of this Contract.
- 6.2. If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Client in writing.

7. Charges and payment

- 7.1. Payment for the Support Services shall be made using the following methods:
 - 7.1.1. **by way of the Monthly Fee paid in advance; or**

- 7.1.2. by way of the Annual Fee paid in advance; or
- 7.1.3. subject to prior written agreement of the Supplier, by way of the Annual Fee paid in twelve equal monthly instalments.

Payments shall be made in Pounds Sterling, without any deduction by the Client for bank transaction charges by the Client's bank or the Supplier's bank. All bank charges will be met by the Client.

- 7.2. The Client shall pay the Monthly Fee for each calendar month to the Supplier in full in the first week of that calendar month. The Client shall pay the Annual Fee and other each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of the invoice.
- 7.3. Without prejudice to any other right or remedy that the Supplier may have, if the Client fails to pay the Supplier on the due date the Supplier may:
 - 7.3.1. charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - 7.3.2. suspend all Support Services and access to software features that are only accessible to Advanced Members until payment has been made in full.
- 7.4. Time for payment shall be of the essence of the Contract.
- 7.5. All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.6. All amounts due under the Contract shall be paid by the Client to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Intellectual Property Rights

- 8.1. All Intellectual Property Rights in or in connection with the Software, any Deliverables or any goods, materials, designs, drawing, instructions and specifications in connection with the Deliverables shall remain at all times vested in, and the property of the Supplier (or its licensors, as the case may be). The Client acknowledges and accepts that it will not own or acquire any Intellectual Property Rights in respect of the same and, to the extent it does so, all such rights are assigned to the Supplier.
- 8.2. The Supplier grants to the Client a non-exclusive licence to use the instructions or specifications supplied with the Deliverables for the sole purpose of using the Deliverables. The Client warrants that it will not use such instructions or drawings for any other purpose and that it will keep the instructions and specifications confidential and will not provide copies of such materials to any third party without the Supplier's prior written consent.

9. Confidentiality and Supplier's property

- 9.1. The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Client's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.
- 9.2. Each party may be given access to confidential information from the other party in order to perform its obligations under the Contract.
- 9.3. Subject to clause 9.4, each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the implementation of the Contract.
- 9.4. A party may disclose confidential information to the extent such confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.5. All materials and data supplied by the Supplier to the Client shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 9.6. The Supplier shall use any information supplied by the Client for the purpose of providing the Support Services and for related purposes including updating and enhancing Client records, analysis to help provide the Support Services and legal and regulatory compliance. The Supplier's use of Client's information is subject to the Client's instructions, relevant data protection legislation including the Data Protection Act 1998 and the Supplier's duty of confidentiality.
- 9.7. The above provision of this clause 9 shall survive termination of the Contract, however arising.

10. Limitation of liability

- 10.1. The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
 - 10.1.1. any breach of the Contract howsoever arising;
 - 10.1.2. any use made by the Client of the Support Services, the Deliverables or any part of them; and

- 10.1.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3. Nothing in these conditions excludes the liability of the Supplier:
 - 10.3.1. for death or personal injury caused by the Supplier's negligence; or
 - 10.3.2. for fraud or fraudulent misrepresentation.
- 10.4. Subject to clause 10.2 and clause 10.3:
 - 10.4.1. the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any of the following losses (whether direct or indirect):
 - 10.4.1.1. loss of profits;
 - 10.4.1.2. loss of business;
 - 10.4.1.3. depletion of goodwill or similar losses;
 - 10.4.1.4. loss of anticipated savings;
 - 10.4.1.5. loss of goods;
 - 10.4.1.6. loss of contract;
 - 10.4.1.7. loss of use;
 - 10.4.1.8. loss or corruption of data or information,

nor any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - 10.4.2. the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in no circumstances exceed a sum equal to 150% of the Annual Fees paid and payable by the Client under the Contract **relating to the Service in question**.

11. Termination

- 11.1. Without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier may terminate the Contract without liability to the Client if:
 - 11.1.1. the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;

- 11.1.2. the Client commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 11.1.3. the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 11.1.4. the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- 11.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- 11.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client;
- 11.1.7. the holder of a qualifying floating charge over the assets of the Client become entitled to appoint or has appointed an administrative receiver;
- 11.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Client;
- 11.1.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets and such attachment or process is not discharged within 14 days;
- 11.1.10. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.3 to clause 11.1.9 (inclusive); or
- 11.1.11. there is a change of control of the Client (within the meaning of section 1124 of the Corporation Tax Act 2010).

12. Force majeure

The Supplier shall not in any circumstances have any liability to the Client under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, failure of the Internet, act of

God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, **disease outbreak**, or default of suppliers or sub-contractors.

13. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. Rights and remedies

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

15. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

16. Entire agreement

- 16.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 16.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

17. Assignment

The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the

exercise of any right or power).

19. Third party rights

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

20. Notices

20.1. Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

20.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office, **or other agreed correspondence address.**

20.2. Any notice or communication shall be deemed to have been received:

20.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

20.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting (or at the time recorded by the delivery service);

20.3. This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this condition, "writing" shall not include email.

21. Governing law and Jurisdiction

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 - SERVICE LEVEL AGREEMENT

1 Interpretation

The following definitions and rules of interpretation apply in this schedule.

1.1 Definitions:

Commercially Reasonable Efforts the same degree of priority and diligence with which the Supplier meets the support needs of its other similar Clients.

Client Cause any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Software by the Client;
- (b) the use by the Client of any hardware or software not provided by the Supplier; or
- (c) the use of a non-current version or release of the Software.

Fault any failure of the Software to operate in all material respects as advertised, including any failure or error referred to in the Service Level Table.

Help Desk Support any support provided by sufficiently qualified and experienced personnel to identify and resolve most support issues relating to the Software only.

Main Agreement the Contract to which this schedule relates.

Service Levels the service level responses and response times referred to in the Service Level Table.

Service Level Table the table set out in paragraph 4.1.

Resolution either of the following outcomes:

- (a) correction of a Fault; or
- (b) a workaround in relation to a Fault (including a reversal of any changes to the Software if deemed appropriate by the Supplier) that is reasonably acceptable to the Client; or
- (c) agreement between the Supplier and the Client that the Software is not capable of producing the desired functionality.

Office Hours Monday to Friday, 09:00 to 17:00 **UK time**, excluding bank holidays.

Outside of Office Hours All times other than those included in Office Hours.

Support Period	the Term as stated in the Main Agreement.
Support Request	request made by the Client in accordance with this schedule for support in relation to the Software, including correction of a Fault.
Support Services	maintenance of the then-current version or release of the Software, including Help Desk Support.

1.2 All initial capitalised terms in this schedule shall have the meaning given to them in the Main Agreement.

2 Support Services

2.1 During the Support Period the Supplier shall perform the Support Services during the Office Hours in accordance with the Service Levels.

2.2 As part of the Support Services, the Supplier shall provide Help Desk Support to the Client's HOPS Administrator (any support for staff users should be channelled through the HOPS Administrator) using the following methods:

2.2.1 Support Ticket raised via the HOPS system is the primary method for submitting **non-urgent** support requests. All tickets are acknowledged.

2.2.2 Telephone (07715 133 930) **for urgent or complex issues**. Telephone lines shall generally be open during Office Hours, **and every effort will be made to respond Outside of Office Hours. An answerphone service is provided.**

2.2.3 Email shall be monitored by the Supplier during Office Hours. **May be used for any non-urgent Support Request if other means are not available.** If a Support Request is urgent it must have the word 'URGENT' in the subject line. If **an urgent Support Request sent by email** is not immediately acknowledged the Client should call using the number provided in clause 2.2.2.

2.3 Each method of Help Desk Support as stated in clauses 2.2.1 to 2.2.3 shall be recorded by way of a support ticketing system as described in clause 4.

2.4 The Supplier shall use Commercially Reasonable Efforts to correct all Faults notified under paragraph 3.3.1.

2.5 The Supplier shall provide technical support for the Software in accordance with the Service Levels.

2.6 The following are not included within the Support Services:

2.6.1 use of the Software in a manner inconsistent with that in which it is intended or recommended to be used;

2.6.2 issues arising from the Client's **or the client's users** deliberate circumvention (or attempted circumvention) of the policies and restrictions put in place on its use.

3 Submitting Support Requests and access

- 3.1 The Client may request Support Services by way of a Support Request.
- 3.2 Each Support Request shall include a description of the problem and use the questions provided in the support ticketing system where relevant.
- 3.3 The Client shall provide the Supplier with:
 - 3.3.1 prompt notice of any Faults; and
 - 3.3.2 such output and other data, documents, information, **URL links, details of users affected**, assistance and (subject to compliance with all Client's security and encryption requirements notified to the Supplier in writing) remote access to the Client System, as are reasonably necessary to assist the Supplier to reproduce operating conditions similar to those present when the Client detected the relevant Fault and to respond to the relevant Support Request.
- 3.4 All Support Services shall be provided from the Supplier's offices.
- 3.5 The Client acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit the Supplier direct access to the Client's system and the Client's files, equipment and personnel.

4 Service Levels

- 4.1 The Supplier shall:
 - 4.1.1 prioritise all Support Requests by way of a support ticketing system in which all Support Requests shall be logged and progress recorded;
 - 4.1.2 give an estimation of the Resolution time if required; and
 - 4.1.3 respond to all Support Requests in accordance with the responses and response times specified in the table set out below:

Severity level of Fault	Definition	Service Level response and response time
1	<p>Urgent or Business Critical Failures (urgent request): An error in, or failure of, the Software that:</p> <ul style="list-style-type: none"> a) materially impacts the operations of the Client's business or marketability of its service or product; b) prevents necessary urgent work from being done; or c) disables major functions of the Software from being performed. d) a critical error in the Software for which a work-around exists; or e) a non-critical error in the Software that affects the operations of the Client's business or marketability of its service or product. 	<p>Level 1 Response during Office Hours:</p> <p>Acknowledgment of receipt of a Support Request within 60 minutes.</p> <p>Level 1 Response Outside of Office Hours:</p> <p>Acknowledgment of receipt of a Support Request within 4 hours.</p> <p>The Supplier shall make best endeavours to:</p> <ul style="list-style-type: none"> a) restore the Software to a state that allows the Client to continue to use all functions of the Software in all material respects after the Level 1 Response time has elapsed; or b) exercise Commercially Reasonable Efforts until full restoration of function is provided; or c) provide an emergency software fix or workaround; or d) provide a temporary release or update release, <p>which allows the Client to continue to use all functions of the Software in all material respects.</p> <p>The Supplier shall provide a permanent Fault correction as soon as practicable after the Supplier's receipt of the Support Request.</p>

2	<p>Minor Error (non-urgent):</p> <p>An isolated or minor error in the Software that:</p> <p>a) does not significantly affect Software functionality;</p> <p>b) may disable only certain non-essential functions; or</p> <p>c) does not materially impact the Client's business performance.</p>	<p>Level 1 Response during Office Hours:</p> <p>Acknowledgment of receipt of the Support Request within 4 hours.</p> <p>Level 1 Response outside of Office Hours:</p> <p>Acknowledgment of receipt of the Support Request within 12 hours.</p>
---	--	--

4.2 The Supplier shall give the Client updates when requested by the Client of the nature and status of its efforts to correct any Fault.

(ends)