

## Maintenance terms & conditions

### PART 1 DEFINITIONS

1. In this Agreement the following expressions shall have the meanings set against them:-

- (a) the "Agreement" these Terms & Conditions and Schedule
- (b) the "Supplier" Newcorp Computer Services Ltd
- (c) the "Customer" \*\*\*\*CUSTOMERS NAME\*\*\*\*\*
- (d) the "Equipment" the whole or where the context so requires any part of the equipment specified in Schedule 1:
- (e) the "Commencement Date" the commencement date is:  
\*\*\*\* DATE \*\*\*\*
- (f) "Maintenance Service" the service provided in Clause 3
- (g) "Contracted Hours" as specified on Schedule 1;
- (h) the "Services" means the Maintenance Service and any additional services from time to time as agreed.
- (i) "Consumable" items consumed during normal operation of the Equipment. Including but not limited to, ribbons, maintenance kits, toner cartridges, inkjet cartridges, paper etc.
- (j) "Remedial Maintenance" rectification of hardware failures.

## PART II THE MAINTENANCE SERVICE

2. The Supplier will provide and the Customer will accept and pay for the Services subject to and upon the following terms and conditions.

### 3. THE MAINTENANCE SERVICE

(a) The Supplier will:

- (i) respond to valid service requests during the Contracted Hours as specified in Schedule 1 and detailed in table 1 (c).
- (ii) an engineer will visit the customer site and make all reasonable endeavours to ensure arrival within the contracted response time as specified in Schedule 1 and detailed in table 1(c). (responses may be changed to appointments by mutual consent of both parties on a per-call basis).
- (iii) provide Remedial Maintenance on the Equipment as specified in Schedule 1.
- (iv) provide all parts other than Consumables, used in the repair of the Equipment. The Supplier reserves the right to provide either new or refurbished replacement parts. Any parts removed shall become the property of the Supplier and the replacement parts become the property of the owner of the Equipment. If for reasons of security the Customer does not wish for fixed media to be removed, the Customer may optionally pay the full purchase price of the replacement and dispose of the faulty unit themselves.
- (v) where a fix is specified in Schedule 1, make all reasonable endeavours to ensure the fault is rectified within the fix period.
- (vi) hold or have access to an adequate stock of replacement parts.
- (vii) optionally repair the Equipment away from the installation address when circumstances dictate. If the repair is expected to take longer than two working days, a temporary replacement will be loaned. Loan equipment will be covered by the Maintenance Service but the Customer will be liable for any loss or damage caused during the loan period.
- (viii) provide a standard of service that shall be reasonably expected of first class professional engineers.
- (ix) rectify problems including accidental or otherwise caused themselves, free of charge.

(b) The Maintenance Service will not include:-

- (i) electrical work external to the Equipment;
- (ii) the maintenance of anything other than the Equipment including external cabling unless specified in Schedule 1
- (iii) remedial measures or increased service time required by reason of any accident, transportation, failure of electrical power, air conditioning or humidity control, neglect, misuse, including, but not limited to a failure on the part of the Customer to comply with his obligations under Clause 8(b) hereof, or use beyond the Equipment's duty cycle.

- (iv) remedial measures or increased service time required by reason of the use of faulty or poor quality consumables including media
- (v) furnishing supplies, accessories, painting or refurbishing materials for the Equipment.
- (vi) making specification changes to the Equipment to take account of the Customer's particular requirements other than those specified by the original manufacture in any published documentation requiring modification to the Equipment due to design error or safety enhancement.
- (vii) performing services connected with the relocation of the Equipment
- (viii) except where agreed with the Supplier, adding accessories, attachments or other devices to the Equipment or removing the same from the Equipment.
- (ix) remedial measures or service time required to rectify work carried out to the Equipment by personnel other than the Supplier.
- (x) remedial measures or service time required to rectify Equipment faults, in existence at the contract "Commencement Date".

(c) Table 1

Responses are:	
VRC	Fixed day per week, call to be placed at least previous day
Next Day	Response within the hours of 9am to 5pm the following day.
4 hr, 9am to 5pm	Calls before 1pm will have a same day response.
4hr, 9am to 9pm	Calls before 5pm will have a same day response.
4hr, 24 x 7	Response within 4 hours regardless of time or day of call.
Fixes	To be completed within the response + fix time.
Days are:	M to F = Monday to Friday, Sat = Saturday, Sun = Sunday.
Special days	Bank Holidays only included on 24 x 7 unless stated otherwise.

#### **4. CHARGES FOR THE MAINTENANCE SERVICE**

- (a) The current charges for the Hardware Maintenance Service are set out in Schedule 1. The Supplier may review these charges and change them after the initial period giving the Customer at least two months prior written notice.
- (b) The current charges for the Software Maintenance Service are set out in Schedule 1. The Supplier will review these charges annually giving the Customer at least one month prior written notice in any changes to the charges.
- (c) In the event that any additions are made to the Equipment, the Supplier may make such variations to the charges as reasonably reflects the effect of the addition which variation shall take effect from the date upon which the addition is made to the Equipment at the Suppliers maintenance rates then in force.
- (d) Items may be removed from the Equipment list on Schedule 1 by the Customer giving a minimum of 30 days written notice to the Supplier, any charges relating to the Equipment so removed will cease to be charged at the rate then in force specified in Schedule 1.

- (e) In the event that the Supplier is involved in any remedial measures or increased service time as a result of any of the matters referred to in Clause 3(b) hereof the Supplier shall be entitled to make a separate charge thereof at its current rates.
- (f) Any additional charges or changes referred to in Clause 4 (a)(b)(c)(d)(e) will be agreed with the Customer before charges are made.

## **5. ADDITIONAL SERVICES**

- (a) The parties may from time to time agree that the Supplier shall provide services additional to the Maintenance Service on an ad hoc basis. Any additional services provided shall be paid for by the Customer at the agreed price.
- (b) Insofar as the same are applicable the terms of this contract shall apply to the provision of additional services.

## **6. PAYMENT**

- (a) All charges calculated on a periodic basis are payable quarterly in advance unless otherwise agreed, or unless the total annual total is less than £1000 which may be invoiced annually in advance.
- (b) Where charges are not calculated on a periodic basis the Supplier shall send the Customer invoices from time to time which shall be payable in full within 30 days of their date.

## **7. DISPUTES**

In the event that the Customer is dissatisfied with any aspect of the service provided by the Supplier herein, the Customer shall prior to taking any course of action prescribe by this Agreement or law serve formal notice upon a director of his complaint and shall give the director 14 days (or such longer period as the parties agree) to remedy said complaint.

## **8. CUSTOMER OBLIGATIONS**

- (a) The Customer will provide the Suppliers engineer with all reasonable access to the Equipment.
- (b) The Customer will at all times maintain suitable accommodation and environmental or original conditions to meet the requirements of the Equipment as specified by the original manufacturer of the Equipment.
- (c) The Customer shall take all reasonable precautions to protect the health and safety of the Supplier's personnel whilst on the Customer's site, including ensuring the presence of a Customer representative in the vicinity of the faulty Equipment during the service visit.
- (d) The Customer shall be solely responsible for all software but without prejudice to the generality of the forgoing shall be responsible for:
  - (i) ensuring adequate copies of its operating system, application software and data files are kept;
  - (ii) restoration of such operating system, application software and data files as may be required after Remedial Maintenance.

- (e) The Customer shall notify the Supplier in writing of any intended change in the location of the Equipment including changes of location within the same site. The Supplier will at the Customer's request supervise the de-commissioning and re-installing of the Equipment (for which an additional charge may be made). The Supplier reserves the right to terminate this Agreement if the Equipment is relocated without written notice or if any failure in the Equipment is due to damage incurred during such relocations. The provisions of this Clause 8 (e) do not apply to Equipment specified by the manufacturer as portable.

## 9. **TERM**

- (a) **Hardware Cover.** This Agreement will commence on the Commencement Date and will be for an initial period of 12 months and thereafter may continue until terminated by at least 30 days written notice given by either party to the other. Hardware contracts may continue without re-quoting.
- (b) **Software Cover.** This Agreement will commence on the Commencement Date and will be for an initial period of 12 months and thereafter may continue until terminated by at least 90 days written notice given by either party to the other. Software contracts will be re-quoted to be renewed.

## PART III GENERAL

### 10. **PAYMENT: SUPPLEMENTARY PROVISIONS**

- (a) All charges payable hereunder will be subject to the addition of any applicable Value Added Tax or any other tax, duty or impost which the Supplier is liable to pay or account for (other than any tax calculated by reference to the Supplier's income).
- (b) In the event that any payment is not made within the time required by this Agreement, the Supplier may charge the Customer interest thereon calculated on a daily basis of a 30 day month at the rate of 2.0% per month on the balance from time to time outstanding as well after as before judgement until such sum is paid in full.

### 11. **GENERAL EXCLUSIONS AND LIMITATIONS**

- (a) The following provisions set out the Suppliers entire liability to the Customer in respect of:
  - (i) Any breach of its contractual obligations pursuant to this Agreement.
- (b) Any representation statement or tortious act or omission including negligence arising under this Agreement are limited to 200% of the net annual value of the contract.
- (c) Without prejudice to the generality of sub-clause (b) above, it is expressly declared that in no event shall the Supplier be liable for any loss of anticipated profits, increased expenses or consequential loss howsoever arising suffered by the Customer.
- (d) Notwithstanding any provision to the contrary in this Agreement, the Supplier does not seek to exclude or limit liability for death or personal injury arising from or as a consequence of the negligence of the Supplier, its employees or agents.

**12. FORCE MAJEURE**

The Supplier shall not be liable and shall be deemed not be in default for any delay or failure in performance under this Agreement resulting from acts of God, civil or military authority, acts of public enemy, war, fire or explosion, earthquake, floods, the elements, third party strikes, inability to obtain export or import licenses or other causes beyond its control.

**13. ASSIGNMENT**

The parties agree that assignment may only take place subject to the consent and such consent shall not be unreasonably refused. Such consent to be in writing and duly authorised by an officer of the company.

**14. WAIVER**

No waiver by either party of any breach by the other party of any obligation contained herein shall constitute a waiver of any other obligation contained herein. Any waiver given by the parties to be effective must be in writing and signed by a director.

**15. INSURANCE**

Notwithstanding the fact that the Equipment or any other Equipment may from time to time be in the possession of the Supplier the insurance and other risk in the Equipment will at all times be vested in the Customer.

**16. TERMINATION AND SUSPENSIONS**

(a) The provisions of this clause shall apply where:-

- (i) The Customer shall fail to make any payment (whether under this or any other Agreement with the Supplier) on its due date; or
- (ii) Either party shall be in default in respect of any obligation on it's part and shall not remedy the same (if capable of remedy) within 14 days (or such longer period as the parties agree) of being notified thereof.
- (iii) Either party shall commit an act of bankruptcy or become insolvent or go into liquidation or suffer a mortgagee or receiver to become entitled to possession of any of its assets (or if any of the foregoing events is threatened).

(b) In any of the circumstances set out in sub-clause (a) above, the party having notified the other party of the latter's default, may (without prejudice to any other remedy that it may have in that behalf) terminate this Agreement forthwith or suspend performance thereof until such time as the matter in question is remedied to its satisfaction. In any event of termination by the Supplier, payment for the Services provided (together with all ancillary charges) shall immediately be due.

(c) Notwithstanding the provisions of Clause 9 (a) the Customer may terminate this Agreement by two month's written notice given within fourteen days of the notice given by the Supplier pursuant to Clause 4(a), (a price increase notice) in the event of the Supplier increasing the maintenance charges in excess of the Retail Price Index over the preceding year.

- (d) In the event that the Customer terminates the contract under any provisions so stated, the Supplier will refund to the Customer all payments made for the period after expiry of the contract.
- (e) Subject to Clause 18 the Supplier may terminate maintenance on any Equipment specified in schedule 1 giving the Customer three (3) months notice thereof.

**17. ENTIRE CONTRACT**

The entire contract with regard to the Supplier maintenance of the Equipment shall be contained in this Agreement and any Schedule(s) signed by both parties. Any qualification of these conditions by the Customer in any written or printed documents or otherwise shall be inapplicable. Only directors of the Supplier have authority to sign this Agreement on behalf of the Supplier and to agree waivers or modifications hereto from time to time and the signature of any other person on behalf of the Supplier shall not be sufficient to bind the Supplier.

The provisions of this Agreement shall be considered severable and if, for whatever reason, any such provision is deemed to be invalid, then such invalidity shall not impair the operation or effect of any of the remaining provisions and the latter shall continue in full force and effect and bind the parties hereto.

**18. NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing and sent by letter, fax, telex or cable addressed to the party to receive the same to in the case of the Supplier to the Supplier's premises and in the case of the Customer to the Customer's address. Any notice sent by First Class mail shall be deemed to have been served on the day of dispatch if sent on a working day during normal office hours or otherwise on the working day next following the day of dispatch.

**19. LAW**

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby irrevocably submit to the non exclusive jurisdiction of the English Courts.