

# TERMS AND CONDITIONS FOR THE PROVISION OF COMPUTER HARDWARE MAINTENANCE SERVICES

## 1 DEFINITIONS

In these conditions the following words shall have the following meanings ascribed to them:

- (a) **"Agreement"** means these terms and conditions and any schedules hereto contained in this document and the Certificate of cover. No terms and conditions other than the terms and conditions contained herein shall be binding upon Resolution unless accepted in writing and signed by the Managing Director of Resolution. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Resolution, whether or not they would materially alter this document, and Resolution hereby objects thereto. The Customer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.
- (b) **"Commencement Date"** means the date of this Agreement;
- (c) **"Consumable"** means items which are consumed during the normal operation of the Equipment including, but not limited to, printer ribbons, inkjet cartridges and laser toner units;
- (d) **"Cover Period"** means the hours of cover specified in your Certificate of Cover, noting that Resolution may close their offices between the Christmas and New Year period.
- (e) **"Customer"** means the person, firm or organisation placing an order for service with the Supplier;
- (f) **"Equipment"** means the equipment listed in your Certificate of Cover;
- (g) **"Minimum Term of Service"** means the period starting with the Commencement Date for which a fixed charge has been agreed as specified on the front sheet;
- (h) **"Product"** means any service, product, item of equipment, hardware, software, microchip, semiconductor (or other item containing, using or dependent upon any of the foregoing) supplied by the Supplier under this Agreement including, in the case of the Service, any hardware or software provided to the Customer by the Supplier as part of such Service or used by the Supplier as part of such Service;
- (i) **"Remedial Maintenance"** means rectification of a hardware failure to restore the Equipment to the configuration and functionality which existed prior to the failure and to the point of passing Resolution (GB) Ltd diagnostic testing applicable to that Equipment;
- (j) **"Prime Shift"** means the hours between 09.00 and 17.00 Monday to Friday, excluding English Public Holidays;
- (k) **"Service"** means the services as described in Clause 2;
- (l) **"Supplier"** means Resolution (GB) Ltd.
- (m) **"Year 2000 Compliant"** means that the relevant item will perform in accordance with the British Standards Institute definition of Year 2000 Conformity including the Amplification of the Definition and Rules (DISC PD 2000-1) (as amended from time to time). Such definition currently requires that neither performance nor functionality is affected by dates prior to, during and after the year 2000 and, in particular (i) no value for current date will cause any interruption in operation; (ii) date-based functionality must behave consistently for dates prior to, during and after Year 2000; (iii) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and (iv) the Year 2000 must be recognised as a leap year. "Year 2000 Compliance" shall be construed accordingly.

## 2 THE SERVICE

- (a) The Service shall commence on the Commencement Date and shall consist of Remedial Maintenance.
- (b) The Supplier shall respond to valid service requests during the Prime Shift or such other hours of cover as may be stated in the Certificate of Cover.
- (c) The Supplier will make all reasonable endeavours to ensure the visit of an engineer to the Customer's site within the contracted response time which is next working day in England and Wales and up to two working days in Scotland, noting that 95% of all Scottish calls are attended next working day and of those 98% are resolved and fixed on the initial visit.
- (d) All standard maintenance item parts, other than Consumables, used in the repair of Equipment shall be provided by the Supplier. The Supplier reserves the right to provide either new or refurbished replacement parts. Defective parts removed during the course of a repair become the property of the Supplier or sub contractor. Replacement parts become the property of the Customer.
- (e) The Supplier shall hold or have access to an adequate stock of replacement maintenance parts.
- (f) The Supplier may repair the Equipment away from the installation address. In such circumstances a repair will be completed as soon as is practically possible. If the repair is expected to take longer than five working days, the Supplier may lend the Customer temporary replacement equipment, at no extra cost, until the repair is complete. Temporary loan equipment will be as near compatible as is available at the time of the repair. Loan equipment will be covered by the Service but the Customer shall be liable for any loss or damage, however caused, during the loan period.
- (g) Personnel required under this Agreement will be provided by the Supplier and will be either from its own engineering staff or a competent sub-contractor.
- (h) The Supplier shall be under no obligation to provide the Service if Equipment has suffered damage as a result of any form of physical or electrical stress, extreme environmental conditions or as a result of causes other than normal use.
- (i) The Service does not include:-
  - (i) supply of Consumables or accessories;
  - (ii) replacement of impact or inkjet printheads;
  - (iii) replacement of laser printer maintenance items (fuser units, transfer/pickup/feed rollers, pads) or MFP maintenance items (lamps, air filters)
  - (iv) replacement of flat screen displays or liquid crystal displays (LCD);

- (v) failures caused by misuse of or faulty media.;
- (vi) electrical work external to the Equipment.
- (vii) Remedial Maintenance required by reason of non-Year 2000 Compliance of the Equipment
- (viii) Carriage assemblies, hammers and interconnecting cabling on impact printers.
- (ix) Screen or PC aspect

### **3 CUSTOMER'S RESPONSIBILITIES**

- (a) The Customer will care for and operate the Equipment in accordance with the manufacturer's instructions and only use it for the purposes for which it was designed. The Customer shall not move, alter or attach anything to, repair, modify or adjust the Equipment or any part thereof except with the Supplier's prior written consent other than to attach external network or serial devices, monitors, keyboards and mice.
- (b) Any faults caused as a result of not using original equipment manufacturer (OEM) consumables will be billable.
- (c) The Customer shall provide, at no charge to the Supplier, full and free access to the Equipment as necessary to provide the Service. If, on arrival at the Customer's site, the Supplier's engineer finds that sufficient and proper access to the Equipment is not provided or that the call was not warranted, the Supplier may exercise the right not to perform the Service and to charge the Customer for the Supplier's costs and expenses reasonably incurred.
- (d) 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.
- (e) The Customer, at the Customer's expense, shall make available and keep in good working condition the following:-
  - (i) one item of media of any type used on the Equipment for storage or diagnostic programs;
  - (ii) any items of media originally supplied by the manufacturer for maintenance purposes;
  - (iii) such Consumables as may be reasonably required to perform the Service.
- (f) The Customer shall be solely responsible for all software but without prejudice to the generality of the foregoing shall be responsible for:
  - (i) ensuring adequate backup 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.
- (g) The Customer shall notify the Supplier in writing of any intended change in 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-installation 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 relocation. The provisions of this clause 3(f) do not apply to Equipment specified by the manufacturer as portable.
- (h) The Customer shall fit the equipment with an anti-surge device so that it is protected in the event of a power surge. If you don't have this device, we can supply one to you for an additional £30.00.
- (i) The Customer, by signing this agreement, is assuring the Supplier that the equipment is in good working order at the time of signing.
- (j) Any damage or faults caused as a result of using non OEM equipment to make modifications or alterations to original equipment will not be covered. (For example; where a customer has fitted a roll modification kit that bolts onto the machine which results in the X-axis being overstressed, then this callout will be billable).
- (k) The Supplier reserves the right to withhold all services until such time as payment has been made.
- (l) Non OEM equipment will not be covered under this contract unless specifically approved in writing and added to the Certificate of Cover.

### **4 ADDITIONAL EQUIPMENT**

- (a) With the agreement of both parties, additional equipment may be included in the Equipment from time to time, the charges for such additional equipment being invoiced on a pro-rata basis (with a minimum charge of six months) up to the end of the then current invoice period and incorporated in the total charge thereafter.
- (b) A revised Certificate of Cover showing such additions will be provided by the Supplier detailing any price increase.

### **5 REFURBISHMENT / MAJOR OVERHAUL**

If in the opinion of the Supplier, a particular piece of Equipment can no longer be properly maintained due to wear or deterioration caused by excessive usage or unsuitable operating environment or for any other reason, the Supplier may withdraw the Service in respect of said item of Equipment. If it is deemed that the Equipment concerned can be refurbished, then it may be refurbished by either the Supplier or its approved agents or sub-contractors provided that the Customer agrees to accept all resulting charges, reasonably and properly incurred.

### **6 CHARGES AND TERMS OF PAYMENT**

- (a) The charges payable by the Customer in respect of the Service are as specified on the front sheet.
- (b) The charges are payable by the Customer within 30 days of date of the Supplier's invoice or no later than 7 days after the start of the period of cover to which the invoice refers, whichever is the earlier.
- (c) The charges include all parts, labour and travelling costs, except when used to repair damage attributable to the Customer in which case the provisions of clause 6(f) shall apply.
- (d) The Supplier reserves the right to make an appropriate adjustment to the annual charge or to alter the contracted service levels where Equipment is relocated.
- (e) The charges are exclusive of Value Added Tax and/or any similar tax which may be imposed from time to time. Such taxes will be applied in accordance with UK legislation in force at the tax point date.
- (f) Any work requested by the Customer and not included in this Agreement will be charged at the Supplier's rates current at the date when the work is performed. A copy of current labour rates will be provided on request.

- (g) If any sum payable under this Agreement becomes overdue, the Supplier reserves the right (without prejudice to its other rights) to suspend performance of the Service until such sum is received by the Supplier. Charges remain payable in full throughout any such period of suspension.

## **7 ALTERATION OF ANNUAL CHARGE**

- (a) The Supplier shall be entitled, on each anniversary of the Commencement Date, to increase its annual charge for the Service. Such increase shall not normally exceed the percentage increase averaged over the previous 12 months of the Retail Prices Index published by HM Government.
- (b) In the event that it proposes an increase greater than that provided for in clause 7(a) above, the Supplier shall give the Customer not less than 30 days notice to that effect. The Customer may, within 30 days of receipt of such notice, appeal in writing against any such alteration which the Customer finds unacceptable. If no acceptable solution has been found following such appeal, the Customer may terminate this Agreement by giving the Supplier 30 days notice in writing, the charges payable during such period of notice being at the previously agreed rate.

## **8 TERM OF AGREEMENT**

This Agreement shall terminate after the fixed term of service has expired.

## **9 CONFIDENTIALITY**

- (a) Each party (hereafter called the "Receiving Party") undertakes to keep and maintain all Confidential Information (which term shall include all information marked or notified to the Receiving Party as confidential or proprietary together with all information which would in the normal course of business be regarded as confidential or proprietary) in the strictest confidence and not to disclose such information to any third party without the prior written consent of the other.
- (b) Each party shall ensure that its employees and sub-contractors:-
- (i) shall only be given access to Confidential Information received from the other party on a "need to know" basis for the purposes of this Agreement;
  - (ii) shall have been made aware of the requirements of confidentiality set out in this Agreement;
  - (iii) shall not cause or permit the Confidential Information to be disclosed to any third party.
- (c) The provisions of this clause 9 shall not prevent either party from disclosing any information where it can demonstrate and document that such information :-
- (i) was in its possession (with full right to disclose) prior to receiving it from the other party; or
  - (ii) is independently developed or received by it from a third party; or
  - (iii) is or subsequently comes into the public domain other than by breach of this Agreement.
- (d) The provisions of this clause 9 shall apply throughout the full course of this Agreement and for five years thereafter.

## **10 WARRANTY**

The Supplier warrants that:-

- (i) the Service will be provided with reasonable skill and care;
- (ii) it will use suitably qualified and experienced personnel in the provision of the Service.

## **11 LIABILITY**

- (a) Neither party shall be liable for failure to perform its contractual obligations, other than an obligation to make payment, if such failure results from Act of God, governmental act, fire, explosion, accident, industrial dispute, or any other cause beyond the party's control.
- (b) The Supplier indemnifies the Customer in respect of:-
- (i) Direct physical damage to the Customer's property which is established to be the result of negligence by the Supplier or its servants or agents while on the Customer's premises for the purpose of this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier's liability for direct damage to property other than the Equipment is limited to £1,000,000 in respect of any event or series of related events.
  - (ii) Direct physical injury or death of any person resulting from the negligence of the Supplier or its servants or agents.
- (c) The Customer indemnifies the Supplier in respect of:-
- (i) Direct physical damage to the Supplier's property which can be established to be the result of negligence by the Customer or its servants and agents. The Customer's liability for direct physical damage is limited to £1,000,000 in respect of any one event or series of related events.
  - (ii) Direct physical injury to, or death of any person resulting from the negligence of the Customer or its servants or agents.
- (d) In view of the disproportion between the acts or omissions likely to constitute breach or negligence on its part and the consequences for the Customer, the Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for:-
- (i) Destruction of or damage to the Customer's data. (The Customer must keep a copy of all data from which it shall exclude the Supplier notwithstanding any requests made by its employees or agents);
  - (ii) Any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect or consequential losses whatsoever.
- (e) In no event shall the Supplier be liable to the Customer for:
- (i) Any loss or damage; or
  - (ii) Any claims, demands, actions, costs, expenses, losses or damages arising from or incurred by reason of any claim against the Customer or any third party

as a result of the non-Year 2000 Compliance of any Products or Services provided under this Agreement, before, during and after the year 2000.

**12 EMPLOYEES**

- (a) Without the prior consent in writing of the other, neither party shall during the term of this Agreement or for six months thereafter solicit, procure, or attempt to procure the employment of any persons employed in the provision of the Service. The Customer will extend this provision to its own customers, where the Supplier is undertaking work on behalf of the Customer for a third party.
- (b) Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances shall the relationship of employer and employee to be deemed to arise between either party and any employee of the other.

**13 WHOLE AGREEMENT**

This Agreement represents the entire agreement between the parties. Each party warrants that no representation not recorded in this Agreement has been made which has induced the other to enter into this Agreement.

**14 HEADINGS**

Headings are for convenience only and shall not affect the construction of the conditions of this Agreement.

**15 ASSIGNMENT**

Neither party shall assign this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed).

**16 WAIVER**

No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any power or right.

**17 NOTICES**

Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, telex, or registered mail postage and shall in the case of telex be deemed to be received on the same date as it was sent and in the case of postage within 48 hours after the date of posting if posted in the United Kingdom. Notices sent by first class post shall be sent to the address of the party set out on the front sheet or to such other address notified in writing by that party to the other for such purposes.

**18 SEVERABILITY**

The various provisions of this Agreement are severable and if any provision is held to be invalid or unenforceable by any court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of any of the other provisions unless the result goes to the root of this Agreement or radically affects it

**19 VARIATIONS**

No variation is valid unless signed by authorised signatories of both parties.

**20 RIGHT OF TERMINATION**

- (a) If, at any time either party makes default or commits any breach of its obligations under this Agreement and (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 14 days, or is involved with any legal proceedings concerning its solvency, or commences liquidation or ceases, or threatens to cease trading, or if serious doubt arises as to its solvency, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this contract forthwith by notice in writing to the other.
- (b) Upon termination of this Agreement by the Supplier for whatever reason the Supplier shall, without prejudice to its other rights and remedies, be paid:-
  - (i) the outstanding balance of charges due in respect of any works or services carried out or provided under this Agreement prior to the date of termination and;
  - (ii) the price of equipment or services ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.
- (c) Termination of this Agreement for whatever reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.
- (d) Notwithstanding anything else contained herein, this Agreement may be terminated by the Supplier in respect of any of the Equipment forthwith on giving notice in writing to the Customer if said item of Equipment shall become obsolete or if the Supplier is no longer able to obtain spare or replacement parts or other necessary support on commercially reasonable terms. In this event a pro rata refund of the pre-paid maintenance charge shall be made.

**21 LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the jurisdiction of the English Courts.