
Terms and Conditions**Version 1.3****April 2010****1** Definitions

1.1 In this agreement, unless the context otherwise requires:

"**Basic Service**" means the repair and maintenance service to be provided pursuant to clause 2.2;

"**Consultancy Service**" means the advisory service to be provided pursuant to clause 2.1.2;

"**Contract**" means the contract for the provision of the Specified Service

"**Contractors Standard Charges**" means the charges from time to time of the Contractor and as supplied in writing to the Customer

"**Contractor**" means Aire Valley Computer Solutions Limited, registered in England and Wales no. 07015472

"**Customer**" means the entity named in the Specification Sheet to whom the Contractor has agreed to provide the Specified Service in accordance with these Terms

"**Equipment**" means the equipment the description and location contained in the Specification Sheet

"**Force Majeure**" means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other industrial action);

"**Liability**" means any liability arising by reason of any representation (unless fraudulent), or any breach of any implied term or any duty at common law, or under any statute, or under any express term of this agreement;

"**Location**" means the location of the Equipment shown in the Specification Sheet, or any other location agreed from time to time between the parties;

"**Loss**" means, in relation to the Customer, loss of profit or any other loss, damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, however the same may arise and whether occasioned by the negligence of the Contractor, its employees or agents or otherwise;

"**Normal Working Hours**" means the hours of 9 am to 4 pm (inclusive) on any Working Day;

"**Specified Service**" means the Service provided by the Contractor

"**Specification Sheet**" means the sheet to which these Terms are appended

"**Working Day**" means any day other than Saturday or Sunday or a Bank or Public Holiday;

"**Writing**", and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 The headings in the Contract are for convenience only and shall not affect its interpretation.

2 Services to be provided

- 2.1 The Contractor shall provide the Customer with:
 - 2.1.1 a repair and maintenance service for the Equipment; and
 - 2.1.2 an advisory service relating to the application and use of the Equipment, and such other matters as may from time to time be agreed by the parties including but not limited to equipment procurement, software, and specific solutions for actual or anticipated problems.
- 2.2 The Basic Service shall consist of:
 - 2.2.1 routine maintenance of the Equipment at such intervals as the Contractor may reasonably determine to be necessary in order to keep the Equipment in good working order; and
 - 2.2.2 the repair of any defect in or malfunction of the Equipment which is discovered by the Contractor's representatives during the course of routine maintenance checks or is reported to the Contractor by the Customer from time to time.
- 2.3 Routine maintenance of the Equipment shall be carried out by one of the Contractor's suitably qualified and duly authorised representatives attending at the Location at such times during Normal Working Hours as may be agreed in advance between the Contractor and the Customer from time to time.
- 2.4 If the Contractor's representative discovers a defect in or malfunction of the Equipment in the course of routine maintenance, the Contractor's representative will use all reasonable endeavours to repair it at the location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Contractor's representative will seek to make suitable arrangements with the Customer for:
 - 2.4.1 a further visit to be made to the Location during Normal Working Hours for the repair of the defect or malfunction; or
 - 2.4.2 if the Equipment is inoperative as a result of the defect or malfunction, its repair at the Location outside Normal Working Hours; or
 - 2.4.3 if it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Equipment (or, where practical, the part of the Equipment in question) for the purposes of repair.
- 2.5 If the Customer reports a defect in or malfunction of the Equipment during Normal Working Hours, the Contractor shall use its best endeavours to ensure that one of the Contractor's suitably qualified and duly authorised representatives attends at the Location, during Normal Working Hours, within the period of time specified in the Specification Sheet the Contractor's representative will use all reasonable endeavours to repair the defect or malfunction at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Contractor's representative shall seek to make such arrangements with the Customer as are mentioned in clause 2.4.
- 2.6 For the purposes only of determining the period of time within which the Contractor's representative makes an attendance pursuant to clause 2.5, any period between the end of Normal Working Hours on one Working Day and the beginning of Normal Working Hours on the next Working Day shall be disregarded.
- 2.7 If the Customer reports a defect in or malfunction of the Equipment after Normal Working Hours on any day, then unless the Contractor expressly agrees otherwise, the report shall be deemed to be made at the beginning of Normal Working Hours on the next Working Day, and clause 2.5 shall take effect accordingly.
- 2.8 All reports of defects in or malfunctions of the Equipment must be made by telephone or in Writing, as appropriate, by a representative of the Customer and otherwise in such a manner as the Contractor

may reasonably require from time to time.

2.9 Pursuant to the Consultancy Service the Contractor shall:

2.9.1 provide the Customer from time to time in Writing with such up to date and accurate information as to the application and use of the Equipment as may be available to the Contractor and as the Contractor may reasonably determine to be necessary or desirable to be provided; and

2.9.2 use its reasonable endeavours to respond promptly, during Normal Working Hours, by telephone or in Writing, as appropriate, to any request from the Customer for information concerning the application and use of the Equipment, or the repair of any defect in or malfunction of the Equipment.

2.10 The Contractor shall ensure that its representatives comply with all safety and security regulations in force at the Customer's premises which are brought to the attention of such representatives.

3 Spare parts and replacements

3.1 The Contractor shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the Equipment in good working order, and the Contractor reserves the right to charge the Customer for the supply. If, however, the Equipment is damaged otherwise than by fair wear and tear or the Equipment requires a major spare part or replacement component (as to whether either of which events has occurred the Contractor's decision shall be final and binding on the Customer), the Contractor shall charge the Customer for the supply.

3.2 All spare parts and replacement components supplied by the Contractor shall become part of the Equipment and any parts and components removed from it shall become the Contractor's property, unless otherwise agreed in Writing between the parties.

3.3 If the Contractor determines that it is necessary to move the Equipment or any part of the Equipment from the Location in order to carry out any repairs, and as a consequence a significant part of the Customer's operations are affected, the Contractor shall use all reasonable endeavours to supply on loan to the Customer equivalent equipment while the Equipment or the part in question is being repaired. The Contractor shall charge the Customer for such loan equipment.

4 Services not included

4.1 Neither the Basic Service nor the Consultancy Service shall apply to any design defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in the Contractor's opinion has arisen as a result of:

4.1.1 electrical work external to the Equipment;

4.1.2 transportation or relocation of the Equipment not performed by or on behalf of the Contractor;

4.1.3 any error or omission relating to the operation of the Equipment;

4.1.4 any modification, adjustment or repair to the Equipment made by a third party without the Written consent of the Contractor;

4.1.5 the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls; or

4.1.6 any other cause (except fair wear and tear) which is not due to the neglect or default of the Contractor.

4.2 If on investigation the Contractor reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in clause 4.1, the Customer shall be liable for all costs incurred by the Contractor in making the investigation and determining its cause, as if that work formed part of the Consultancy Service.

- 4.3 If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Contractor's fault (as to whether either of which events has occurred the Contractor's decision shall be final and binding on the Customer) the Contractor reserves the right to terminate the Contract with immediate effect, by giving Written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Contractor shall repay to the Customer a fair proportion of any charges for the Contractor's services which have been paid in advance by the Customer.
- 4.4 Except as expressly provided in the Contract or as agreed between the parties in writing, the Contractor shall have no obligation to provide any services to the Customer outside Normal Working Hours.

5 Customer's obligations

- 5.1 The Customer shall:
- 5.1.1 at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
- 5.1.2 use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in Writing by the Contractor; and
- 5.1.3 not allow any person other than the Contractor's representatives to adjust, maintain, repair, replace or remove any part of the Equipment.
- 5.2 The Customer shall ensure that the Contractor's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable the Contractor to perform its duties.
- 5.3 The Customer shall provide the Contractor with such information concerning the Equipment, its application, use, location and environment as the Contractor may reasonably request to enable it to carry out its duties.
- 5.4 The Customer shall take all such steps as may be necessary to ensure the safety of any of the Contractor's representatives who visit any premises of the Customer.

6 Charges

- 6.1 The Customer shall pay to the Contractor the Contractor's Standard Charges for the time spent by the Contractor's representative in providing the Consultancy Service to the Customer; the Contractor shall invoice the Customer for the Consultancy Service monthly in arrears or at such other intervals as may be agreed from time to time between the parties, and the Customer shall, within 30 days after the receipt of each invoice from the Contractor, pay to the Contractor the amount shown in the invoice.
- 6.2 If the Customer requests the Contractor's services without any reasonable justification, or requires the Contractor to repair a defect in or malfunction of the Equipment which is due to causes not covered under the Contract, the Customer shall be liable to pay the Contractor's standard charges from time to time in force for such services.
- 6.3 The Customer shall, within 30 days after the receipt of an invoice from the Contractor, reimburse the Contractor for all travelling, accommodation and other expenses reasonably incurred by any representatives of the Contractor in connection with the performance by the Contractor of its obligations under this agreement.
- 6.4 All charges and other sums payable by the Customer under the Contract are exclusive of any

applicable value added tax, which shall be additionally payable by the Customer together with the charge or the sum in question.

- 6.5 If the Customer fails to pay on the due date any amount which is payable to the Contractor pursuant to the Contract then, without limiting clauses 9.2 and 9.3, that amount shall bear interest from the due date until payment is made to the Contractor (both before and after any judgment) at 4 per cent per annum over Barclays Bank plc base rate from time to time.

7 Liability

The Contractor shall have no Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services pursuant to the Contract (except in respect of death or personal injury resulting from negligence) and the total Liability of the Contractor for any Loss of the Customer so arising in any year of the Contract in respect of any one event or series of connected events shall not exceed the charges payable by the Customer for the Basic Service for that year.

8 Force majeure

- 8.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 8.2 Neither party shall be deemed to be in breach of this agreement, or otherwise be liable to the other, for 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 is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

9 Duration and termination

- 9.1 The Contractor shall be entitled to terminate the Contract.
- 9.1.1 in the circumstances and to the extent referred to in clause 4.3; and
- 9.1.2 forthwith by giving written notice to the Customer if any sum payable under the Contract is not paid on the due date.
- 9.1.3 upon the Contractor giving the Customer one months written notice
- 9.2 Either party may forthwith terminate the Contract by giving Written notice to the other if:
- 9.2.1 the other commits any continuing or material breach of any of the provisions of the Contract and, if a breach is capable of remedy, fails to remedy the breach within 30 days after receipt of a Written notice giving full particulars of the breach and requiring it to be remedied;
- 9.3 The rights to terminate the Contract given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 9.4 On the termination of the Contract for any reason, neither party shall have any further obligation to the other under this agreement, except as otherwise provided in the Contract except for rights which have accrued prior to termination.

10 Nature of agreement

- 10.1 The Contractor may perform any of the obligations undertaken by it and exercise any of the rights granted to it under the Contract through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985, as amended) or the subsidiary of any such holding company, and any act or omission of any such company shall for the

purposes of the Contract be deemed to be the act or omission of the Supplier.

- 10.2 Subject to the Customer's consent (which shall not be unreasonably withheld) the Contractor may carry out its obligations under the Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 10.3 Except as provided in clauses 10.1 and 10.2, the Contract is personal to the parties, and neither of them may, without the Written consent of the other, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this agreement.
- 10.4 Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.
- 10.5 The Contract contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties, and may not be modified except by an instrument in Writing signed by the duly authorised representatives of the parties.
- 10.6 Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in the Contract shall affect the liability of either party for fraudulent misrepresentation.
- 10.7 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 10.8 The Contract shall be governed by and construed in all respects in accordance with the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.

11 Notices and service

- 11.1 A notice or other information required or authorised by the Contract to be given by either party to the other may be given by hand or sent by first class pre-paid post, facsimile transmission or comparable means of communication, excluding electronic mail to the other party at the address referred to in clause 11.4.
- 11.2 A notice or other information given by post under clause 11.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, and sent by first class, pre-paid post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 11.3 A notice or other information sent by facsimile transmission or comparable means of communication (excluding electronic mail) shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party at the address referred to in clause 11.4 within 24 hours after transmission.
- 11.4 A notice or other information or any legal proceedings concerning or arising out of the Contract shall be addressed to the company secretary of the party in question at its registered office, or to such other officer or at such other address as may be notified by the party in question in Writing from time to time.

12 General

English Law shall apply to the Contract and the parties agree to submit to the exclusive jurisdiction of the English Courts.