

1. DEFINITIONS

1.1. In this Agreement the following terms and expressions have the following meanings:

- (i) 'Business Days' means Monday to Friday (inclusive) in any week excluding any day that is a public holiday throughout England
- (ii) 'Certificate of Service' means the certificate provided by ISC specifying the response service levels and period of cover
- (iii) 'Commencement Date' means the date which is 10 working days from the date set out in the Certificate of Service upon which the provision of the Services begin
- (iv) 'Event of Default' means any act or omission on the part of ISC or its employees, agents or sub-contractors
- (v) 'Excepted Services' means those services which do not fall within the Services provided under this Agreement
- (vi) 'Hardware' means the hardware covered under this Agreement
- (vii) 'Insolvent' means the Customer becoming unable to pay its debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act of 1986 or the Customer ceasing to pay its debts in the ordinary course of business or being unable to pay its debts as they become due or the Customer ceasing or threatening to cease to carry on its business
- (viii) 'IP Rights' means patents, trade marks, service marks, registered designs, applications for any of these items and the right to apply for them in any part of the world together with copyright, design right, database rights, inventions, know-how, confidential information, trade secrets, domain names, trade and business names, any other intellectual property rights or similar protected rights in any country
- (ix) 'ISC' means ISC Services Ltd, being a subsidiary of ISC Computers plc
- (x) 'Management Information' means information relating to the provision of the Services including, but not limited to, designs, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, and software
- (xi) 'Normal Working Hours' means 9am to 5.00pm during Business Days
- (xii) 'Place of Use' means that part of the Customer's premises where the Hardware is installed and operated
- (xiii) 'Response Time' means the number of Normal Working Hours shown between receiving and responding to a call for Services
- (xiv) 'Services' means the services referred to in Clause 2
- (xv) 'Software' means the items of computer software associated with the Hardware covered under this Agreement

2. THE SERVICES

2.1. Service descriptions including detailed information are available from the following source:

http://www.iscnet.co.uk/file/content_realid/200/

Copies of the service descriptions are also available from any ISC office location.

2.2. ISC may require from the Customer proof of purchase of the Service.

2.3. Service will be provided in the United Kingdom only.

2.4. ISC does not warrant that the Services (or Excepted Services) will cause the Hardware to operate without interruption or error.

2.5. At ISC's discretion Service will be provided using remote diagnosis and support or other delivery methods. ISC shall determine the appropriate delivery method required in order to deliver the Service.

2.6. Where the Service is delivered on the Customer site, the ISC engineer will continue to deliver the Service until the product is operational. ISC reserve the right to suspend work temporarily if additional parts or resources are required.

3. CUSTOMER'S OBLIGATIONS

3.1. During the currency of this Agreement the Customer shall in relation to the provision of the Services:

- (i) ensure that proper environmental conditions are maintained for the Hardware and shall maintain in good condition the accommodation of the cables and fittings associated therewith and the electricity supply thereto;
- (ii) not make any modification to the Hardware without ISC's prior written consent;
- (iii) keep and operate the Hardware in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees are allowed to operate the Hardware;

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- (iv) not attempt to adjust, repair or maintain the Hardware and shall not request, permit or authorise anyone other than ISC to carry out any adjustments, repairs or maintenance of the Hardware;
- (v) use on the Hardware only such supplies and consumables as the manufacturer recommends;
- (vi) promptly notify ISC of any change in the Place of Use;
- (vii) promptly notify ISC if the Hardware needs maintenance or is not operating correctly;
- (viii) provide such telecommunication facilities as are reasonably required by ISC for testing and diagnostic purposes

4. QUALIFIED PRODUCT

- 4.1. Only the Hardware referenced in this Agreement is eligible for cover hereunder. Any internal accessories purchased with the product or subsequent to the purchase are covered under the Service for the remainder of the term
- 4.2. Failure of the product that has already occurred at the time of purchase will not be covered

5. REPLACEMENT PARTS

- 5.1. ISC reserves the right to supply new, used or reconditioned replacement parts in the performance of its duties hereunder.
- 5.2. Any parts and components removed from the Hardware shall become the property of ISC.

6. EXCEPTED SERVICES

- 6.1. The Services shall not include:
 - (i) the restoration of data
 - (ii) the correction of any fault due to:
 - (a) the Customer's failure to maintain a suitable environment for the Hardware at the Place of Use in accordance with the manufacturer of the Hardware's written specifications;
 - (b) the Customer's neglect or misuse of the Hardware or its failure to operate the Hardware in accordance with the manufacturer of the Hardware's instruction manuals or for the purposes for which it was designed;
 - (c) the alteration, modification or maintenance of the Hardware by any party other than ISC without ISC's prior written consent;
 - (d) the transportation or relocation of the Hardware save where the same has been performed by or under the direction of ISC;
 - (e) the use of defective or inappropriate supplies with the Hardware;
 - (f) any defect or error in any Software used upon or in association with the Hardware;
 - (g) any accident or disaster affecting the Hardware including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary;
 - (h) the Customer's failure, inability or refusal to afford ISC's personnel proper access to the Hardware;
 - (i) the painting or finishing of the Hardware;
 - (j) electrical work external to the Hardware;
 - (iii) the provision, repair and or replacement of any consumables including but not limited to all drum, ribbon, toner/ink cartridges, paper, collector units/bottles, paper separator belt, maintenance kits, ozone filters, developer kits, printhead, fuser units, print wheels, ink bottles/ink, print shields, print bands, re-chargeable batteries, terminal/pc accessories (e.g. screen filters, mouse mats, holsters, monitor arms), bulbs/lamps, power leads, power units, door hinges, hammer modules/banks;
 - (iv) any modification, alteration or removal of an attachment to the Hardware
 - (v) maintenance of the Hardware which is necessitated by any cause other than fair wear and tear including without limitation:
 - (a) failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or
 - (b) any fault in any attachments or associated equipment (whether or not supplied by ISC) which do not form part of the Hardware;
 - (vi) the correction of any fault or damage to the extent that the loss or damage would not have arisen but for the failure of the Customer to maintain up to date back-up copies of data and programs or to the extent that such loss or damage would have been mitigated by
 - (a) maintenance by the Customer of such back-up copies;

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(b) the provision of Services other than at the Place of Use

7. INTELLECTUAL PROPERTY

- 7.1. IP Rights owned by the Customer in the Management Information and supplied by the Customer to ISC shall remain the property of the Customer.
- 7.2. IP Rights in Management Information owned by ISC and prepared by ISC specifically and exclusively for the Customer as part of the Services ("Customer Management Information") shall on payment of all fees due under this Agreement belong to and are assigned to the Customer so far as such assignment is lawfully possible. ISC agrees to execute at the cost of the Customer all documents and perform such acts as may be reasonably necessary to enable the Customer to obtain or maintain and perfect its title to IP Rights in such Customer Management Information. For the avoidance of doubt, nothing in this Clause 7 shall affect the ownership of IP Rights in Customer Management Information owned by third parties.
- 7.3. The Customer grants to ISC a non-exclusive, irrevocable, royalty-free licence to use, copy and/or modify the IP Rights referred to in Clause 6.2 and the Customer Management Information for the purpose of performing the Services or any other obligations under this Agreement.
- 7.4. Subject to Clause 6.3 all other IP Rights owned or used by ISC including (without limitation) those used in performing the Services, those in any system used to deliver Management Information or to facilitate communication between the Customer and ISC or those in Management Information (other than Customer Management Information) shall remain with and be owned by ISC or any applicable third parties.
- 7.5. The Customer is granted a non-exclusive, royalty-free licence to use, copy and/or modify Management Information owned by ISC in performing the Services for its own internal business purposes in order to receive the benefit of the Services.
- 7.6. In respect of Management Information provided by ISC it is responsibility of ISC to obtain (at no cost to the Customer) such licences to use third party IP Rights as may be necessary to enable the Services to be provided

8. TERM

- 8.1. This Agreement shall commence on the Commencement Date and shall continue for the period specified in the Certificate of Service.

9. DEFAULT AND TERMINATION

Notwithstanding anything else contained herein, this Agreement may be terminated:

- 9.1. If the Customer fails to pay any invoice or any sum due to ISC under this Agreement or the Customer or its Associated Company become Insolvent or the Customer commits a material breach of this agreement and fail to remedy that breach after being requested to do so all sums outstanding between the Customer and ISC under this Agreement shall become immediately due and payable and ISC shall be entitled to do any one or more of the following (without prejudice to any other right or remedy ISC may have):
- (i) Require payment in cleared funds in advance of further provision of Services;
 - (ii) Cancel this Agreement with the Customer or suspend any further deliveries of Services under this Agreement;
 - (iii) Terminate this or any other contract with the Customer without liability on ISC's part by our written notice to the Customer's last known address; and / or
 - (iv) Charge interest on monies outstanding from the Customer to ISC in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgement.
- 9.2. The Customer shall reimburse ISC's costs including legal costs on an indemnity basis which ISC incur in enforcing ISC's rights under this Agreement including but not limited to recovery of any sums due. Such sums shall be in addition to any interest and statutory compensation recoverable by ISC under the Late Payment of Commercial Debts (Interest) Act 1998.

10. LIMITATION OF LIABILITY

- 10.1. The following provisions set out ISC's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of any breach of its contractual obligations arising under this Agreement and any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement. Except as set out in this Agreement, all warranties, conditions terms or undertakings statutory or otherwise express or implied are excluded.

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- 10.2. Nothing in this Agreement will exclude or limit ISC's liability to the Customer for fraud or death or injury resulting from ISC's own, or that of its employees' agents' or subcontractors' negligence.
- 10.3. ISC will not be liable to the Customer for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Hardware or Software or loss of or spoiling of the Customers programs or data) resulting from any breakdown, defects or error in the Hardware or Software.
- 10.4. ISC's entire liability shall be limited to damages of an amount equal to 120% of the total paid by the Customer for this Agreement.
- 10.5. ISC shall not be liable to the Customer in respect of any Event of Default for loss of profits, loss of revenue, loss of business, loss of goodwill, loss or damage to or corruption of data, loss of opportunity; or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party).
- 10.6. Nothing in this Agreement shall affect the statutory rights of consumers, nor any liability that cannot be excluded or limited by law.

11. MISCELLANEOUS

- 11.1. This Agreement shall be considered as an agreement made in England and according to English Law and, shall be subject to the non exclusive jurisdiction of the English Courts to which both parties hereby submit.
- 11.2. This Agreement, which constitutes these terms and conditions, service descriptions and Certificate of Service, sets out the entire agreement between ISC and the Customer with respect to its subject matter and supersedes any previous Agreements between the parties in relation to that subject matter.
- 11.3. This Agreement is personal to the Customer and it may not be assigned without the consent of ISC.
- 11.4. ISC may perform all or any of its obligations under this Agreement through its group companies, agents or contractors as it sees fit.
- 11.5. The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled under this agreement, shall not constitute a waiver of any breach of this Agreement.
- 11.6. The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give a person who is not a party to this Agreement any right under it.
- 11.7. If a party is unable to carry out or is delayed in carrying out its obligations under this Agreement for any reason beyond that party's reasonable control, ("Force Majeure") it shall not be liable for its inability or the delay. If the Force Majeure continues for a continuous period of 3 months then either party may terminate this agreement by notice to the other party.
- 11.8. This Agreement sets out the entire agreement between ISC and the Customer with respect to its subject matter and supersedes any previous Agreements between the parties in relation to that subject matter.
- 11.9. No purported variation of this Agreement shall be effective unless made in writing and signed by the Customer and a director of ISC.
- 11.10. Both ISC and the Customer waive any entitlement to a claim in relation to a representation which is not made or confirmed in writing signed by a director or authorised officer of that party save in the case of fraudulent concealment or fraudulent misrepresentation.
- 11.11. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any competent authority the remaining provisions shall continue in full force and effect.

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