

BLUE CHIP'S CONDITIONS FOR THE PROVISION OF HARDWARE MAINTENANCE

The Company agrees to provide the Customer with maintenance for the Equipment specified in the Maintenance Schedule upon the following terms and conditions. The maintenance period shall commence on the Commencement Date referred to in the Maintenance Schedule for the specific items of the Equipment detailed.

The initial period of the Contract is stated in the Maintenance Schedule and starts from the respective Commencement Dates for each item of Equipment and shall automatically continue thereafter until or unless terminated in writing by either party with ninety days notice.

1. Interpretation
 - 1.1 In these Conditions words defined in the Contract, including the schedules, shall have the same meaning unless the context otherwise requires and the following expressions shall have the following meanings:
 - 'ADDITIONAL SERVICES' any goods or services provided by Blue Chip to the Customer other than the Services
 - 'CONDITIONS' the terms and conditions set out in this document
 - 'CONTRACT' the contract for the provision of the Services pursuant to these Conditions;
 - 'COVERAGE HOURS' means the business hours during which the Services are available as set out in the Contract
 - 'SCHEDULE' is the appendix within the contract that details specific Customer terms
 - 'RPI' the general index of retail prices which is published monthly in the United Kingdom by the Office for National Statistics
 - 'TERM' the term of the Contract
2. Supply of the Services
 - 2.1 Blue Chip shall provide during the Coverage Hours described in the Schedule and the Customer may use the Services as and when required from time to time.
 - 2.2 Blue Chip will (if it is able to do so) at the request and expense of the Customer supply Additional Services. The charges therefore will be Blue Chip's standard charges at that time.
3. Delivery of the Services
 - 3.1 To elect to use the Services the Customer must notify Blue Chip in accordance with Blue Chip's procedures as notified to the Customer from time to time.
 - 3.2 The Customer shall be responsible to Blue Chip for giving Blue Chip any necessary information (including ensuring the accuracy of such information) within a sufficient time to enable Blue Chip to perform its obligations.
 - 3.3 Blue Chip reserves the right to make any changes in the specification of the Services which are required to conform with any applicable law or which do not materially affect their nature, quality or performance.
4. Charges
 - 4.1 Subject to the following provisions of this clause, the Services shall be available in return for payment of the Charges. Such charges are detailed within the Schedule.
 - 4.2 Blue Chip shall be entitled to at any time and from time to time to increase the Charges by not less than 90 days prior written notice such notice to take effect on or after the expiry of the Initial Period. If the increase shall exceed a percentage equal to the percentage increase in the RPI for the period from the Commencement Date or, if later, the last review date, the Customer shall have the right to terminate the Contract as and from when such notice expires by giving Blue Chip written notice of termination not less than 90 days before such date.
 - 4.3 The Maintenance Charges are set out in the Maintenance Schedule for each item in the Schedule and are payable in advance at the intervals specified in the Schedule. Blue Chip shall invoice the Customer in advance at the intervals set out in the Contract in respect of the Services and the Customer shall pay the sum due (without deduction or set off) before the date at which the Service commences. For the avoidance of doubt the Customer shall not be entitled to a refund in the event that it does not make use of the Services at its disposal.
 - 4.4 Blue Chip shall invoice the Customer monthly in arrears for the charges in respect of the Additional Services or in respect of any loss or expense incurred as a result of the Customer's instructions or lack of instructions and the Customer shall pay the sum due (without deduction or set off) within 30 days from the date on which each invoice is submitted by Blue Chip.
 - 4.5 The Charges are exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Blue Chip.
 - 4.6 Blue Chip shall be entitled to recover the Charges notwithstanding that performance of the Services may not have taken place. The time of payment of the Charges shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
 - 4.7 If the Customer fails to make any payment by the due date then, without prejudice to any other right or remedy available to Blue Chip it shall be entitled to cancel the Contract or suspend performance of the Services, appropriate any payment made by the Customer to such of the goods or services supplied under any other contract between the parties as Blue Chip may think fit (notwithstanding any purported appropriation by the Customer and/or charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum above HSBC Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
5. Customer's Obligations
 - 5.1 The Customer shall observe all appropriate regulations in relation to telecommunications and other communication services, all directions and guidelines issued by the manufacturer of the Equipment and all statutory and other regulations relating to the use of the Equipment.
 - 5.2 The Customer shall ensure that proper environmental conditions are maintained for the Equipment; advise Blue Chip of any modifications to the Equipment or any other information which may affect the provision of the Services; take such preventative or corrective measures recommended by Blue Chip; make available to Blue Chip such information as may be necessary to enable Blue Chip to perform its obligations and shall if requested by Blue Chip provide staff familiar with the Customer's programs and operations, which staff shall co operate fully with Blue Chip and have the authority to act on behalf of the Customer; make available to Blue Chip free of charge all facilities and services reasonably required by Blue Chip to enable Blue Chip to perform the Services; provide such telecommunication facilities as are reasonably required by Blue Chip for testing and diagnostic purposes at the Customer's expense; use the Equipment for the data processing function for which it was designed. The quality and integrity of the data is entirely the Customer's responsibility.
 - 5.3 The Customer shall ensure that installation and use of the equipment is in line with any Manufacturers recommendations and that in the event of a malfunction, that Blue Chip shall be informed without delay.
 - 5.4 The Customer shall take all reasonable precautions to avoid damage to the Equipment due to the failure to exercise proper care by staff and all third parties.
 - 5.5 The Customer hereby grants permission for and requests the Company to carry out a full inspection of and diagnostic check on the Equipment (site survey) and provide an initial report thereon. Information obtained from such inspection could result in a change in the content of the schedule and, therefore, the maintenance charges. Subject to the agreement of the customer, these changes will take effect from the commencement date of the Contract.
 - 5.6 The Customer shall provide an adequate level of system and data backup in order to protect both parties against accidental loss of data during any fault rectification procedures.
6. Service Coverage. The Maintenance Charges cover the following service to be provided by the Company.
 - 6.1 the cost charged to the Customer for providing labour during Coverage Hours.
 - 6.2 the rectification of a breakdown or failure of any of the components of the Equipment causing stoppage of its functions and necessitating repair to or replacement of such components before such equipment can resume working and
 - 6.3 the malfunction of any component of the Equipment not causing stoppage of the functions but which is identified as result of a diagnostic check and which necessitates the Equipment being taken out of use for repair or replacement of such component.
 - 6.4 the provision of any parts, excluding consumables for the rectification of any failure or malfunction of any Equipment at any time during the term of the Maintenance Agreement.
 - 6.5 notification of engineering changes advised by the manufacturer of the Equipment, purchase of and fitting such engineering changes, preventative maintenance and maintenance of Equipment to manufacturers standards.
 - 6.6 advice on installation of Equipment and recommendations for the provision of an appropriate environment for the Equipment.
7. Duration
 - 7.1 The Contract shall come into force on the Commencement Date and, subject to the rights of early termination set out in these Conditions, shall continue in force for the Term determined within the Schedule.
 - 7.2 The Contract may be terminated:
 - 7.2.1 in full or part, subject to a minimum duration of the Term, by giving Blue Chip 90 days written notice
 - 7.2.2 by either party forthwith on giving notice in writing to the other if the other commits any breach of any term of the Contract (other than any failure by the Customer to make any payment hereunder in which event the provisions of clause 4 above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or
 - 7.2.3 by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter administration or into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.
 - 7.2.4 If the Customer fails to provide an environment suitable for the equipment in accordance with the manufacturers specifications.
 - 7.2.5 if the Customer is in breach of any of its obligations under the Maintenance Agreement.
- 7.3 Any termination of the Contract howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 7.4 Additional equipment may be added to the Contract by the Customer at any time during the Term of the Contract and will be covered for the Term of the Contract.
- 7.4.1 Additional equipment having the same model number(s) and the same cover level/response times as equipment already covered by the Contract will be charged at the same rate. The Company will quote rates for new additional equipment on request and will add such items to the Contract on receipt of a written instruction from the Customer.

- 7.4.2 Subject to Clause 7.4.3, any item may be removed from the Contract by the Customer at any time during the Term by giving Blue Chip 90 days written notice. A full pro-rata credit, without penalty, will be issued unless the Contract is subject to a period discount. Where a period discount applies to a Contract, the value of the period discount already received up to the end of the notice period will be deducted from the pro-rata credit.
- 7.4.3 During the Term of the Contract, the net effect of any additions and/or removals to/from the Contract must not at any time cause the value of the Contract to fall below 80% of the Contract's original annual value.
8. Subject to the agreement of the Customer, additional charges will be paid by the Customer for services at the Company's applicable hourly service rates from time to time in force, to include travel and waiting time and for parts and materials supplied for the following:-
- 8.1 software support services including advice on packages suitable to the Customer's needs, installation of new releases of software and reloading of data.
- 8.2 the cost of providing labour and or parts to undertake matters occasioned by the Customer's non compliance with clauses 5.1,5.2,5.3,5.4,5.6.
- 8.3 the cost of repair of damage or increase in service time caused by: conversion of one model for another: the movement of equipment from the location specified in the schedule: the installation or removal of a feature whenever such conversion, installation or removal is not performed by the Company; use of inappropriate consumables or accessories; painting or refurbishing the Equipment; making specification changes or performing services connected with the relocation of the Equipment; adding or removing attachments, accessories or other devices.
- 8.4 repair of damage or increase in service time caused by: accident or disaster which will include but not be limited to fire, flood, water, wind and lightning; transportation; neglect or misuse; alteration to any of the Equipment in respect of any change to Equipment which deviates from the manufacturers physical, mechanical or electrical machine designs, regardless of the need for additional devices or parts.
- 8.5 calls deemed to be unnecessary or "false alarm" calls resulting in action taken by the Company.
9. Warranties
- 9.1 The Customer warrants to Blue Chip that the Equipment is fully operational at the Commencement Date.
- 9.2 The Customer hereby warrants to Blue Chip that the Customer has not been induced to enter into the Contract by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Contract and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation or for breach of any warranty not contained in the Contract and/or to rescind the Contract.
- 9.3 Blue Chip warrants that the Services will be provided using reasonable skill and care. This warranty is given subject to the following conditions: Blue Chip shall be under no liability in respect of any defect in the Services arising from any information or instruction supplied by the Customer; Blue Chip shall be under no liability in respect of any failure, by the Customer, to follow Blue Chip's instructions.
- 9.4 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.5 Any claim by the Customer which is based on any defect in the Services must be notified to Blue Chip within 48 hours from the date of performance or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Time is of the essence.
- 9.6 Where any valid claim in respect of the Services is notified to Blue Chip in accordance with these Conditions, Blue Chip shall be entitled to and shall be given the opportunity to re-perform the Services free of charge.
- 9.7 Except in respect of injury to or death of any person the liability of Blue Chip under these Conditions in respect of each event or series of connected events shall not exceed the Charges for that year of the Term. A number of defaults whether successive or concurrent which together result in or contribute to substantially the same loss or damage shall be treated as one default in assessing Blue Chip's liability pursuant to this clause 7.
- 9.8 Notwithstanding anything else contained in these Conditions Blue Chip shall not be liable to the Customer for loss of profits or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.
- 9.9 The Customer agrees to indemnify Blue Chip against all losses, costs, expenses or damages arising as a result of breach of the Customer's warranties set out above or any breach of the Customer's obligations pursuant to clause 5.
- 9.10 The Customer acknowledges that the provision of the Services does not ensure uninterrupted operation of the Equipment.
- 9.11 Replacement of parts deemed necessary by the Company arising from maintenance carried out under the terms of the Maintenance Agreement will be supplied on an exchange basis and the salvaged parts shall become the exclusive property of the Company.
10. Confidentiality
- 10.1 Each party shall treat as confidential all information obtained from the other pursuant to the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause.
- 10.2 Content of Customer's Data
- 10.21 The Customer warrants that the Customer's data will not contain anything obscene, offensive, or defamatory, that it is registered for the purposes of the Data Protection Act and that the Customer has and will during the Term comply with the provisions of that Act. The Customer will indemnify Blue Chip and keep Blue Chip fully and effectively indemnified against all actions, proceedings, claims, demands, damages and costs (including legal costs on a full indemnity basis) occasioned to Blue Chip as a result of any breach of the said warranties
- 10.22 The Company warrants that any data or information that may be disclosed to or held by the Company during the course of the provision of services will be protected under the obligations pertaining to the Data Protection Act 1998
- 10.3. Intellectual Property Rights Indemnity
- 10.31 The Customer shall indemnify Blue Chip against any claim made by any third party for alleged infringement of any copyright or other intellectual property rights which arises as a result of the processing of any of the Customer's programs or data.
11. Force Majeure
- 11.1 Blue Chip shall not be liable to the Customer or be deemed to be in breach by reason of any delay in performing, or any failure to perform, any of Blue Chip's obligations, if the delay or failure was due to any cause beyond Blue Chip's reasonable control.
12. Restrictive Covenant
- 12.1 The Customer hereby agrees that it shall not during the Term and for 12 months thereafter solicit or entice away or seek to entice away from Blue Chip or offer employment or engagement to any member of its staff employed in the provision of the Services and/or employ or engage any member of Blue Chip's staff to perform services materially the same as the Services.
13. General
- 13.1 The Customer shall not assign the Contract without the prior written consent of Blue Chip.
- 13.2 No failure or delay by Blue Chip in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by Blue Chip of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.
- 13.4 No variation to the Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Blue Chip.
- 13.5 Blue Chip's employees or agents are not authorised to make any representations concerning the Services or Additional Services unless confirmed in writing.
- 13.6 Any advice or recommendation given by Blue Chip or its employees or agents to the Customer as to the Services or Additional Services are not confirmed in writing is followed or acted upon entirely at the Customer's own risk.
- 13.7 Any typographical, clerical or other error or omission in any sales literature, quotation, invoice, drawings, document or information issued by Blue Chip shall be subject to correction without any liability on the part of Blue Chip.
- 13.8 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Contract or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.
14. The Ultimate Guarantee
- 14.1 if at any time during the contracted period the Customer is not satisfied with the ability to repair faulty parts or equipment by the Company, the Customer reserves the right to invoke Blue Chip's Ultimate Guarantee.
- 14.2 the Ultimate Guarantee will, at the Customers request, empower Blue Chip to engage the services of the manufacturer of the affected equipment in order to repair the parts or equipment that has been determined as faulty.
- 14.3 any manufacturers costs incurred in repairing or replacing such parts shall be the responsibility of Blue Chip.
15. Rights of Third Parties - For the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Contract to be enforced by any third parties.