

## BLUE CHIP'S CONDITIONS FOR THE PROVISION OF HARDWARE MAINTENANCE

### 1. Definitions In these Conditions the following

expressions have the following meanings:

'the Agreement'	means the contract for the provision of the Services pursuant to these Conditions
'Business Hours'	means the days on which the Services are available between the hours set out in the Schedule
'the Commencement Date'	means the date on which the Agreement shall become effective as set out in the Schedule
'Conditions'	means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any additional terms and conditions agreed in writing between the Customer and the Company;
'the Equipment'	means the equipment as set out in the Schedule and such additions and changes thereto as shall from time to time be agreed or authorised in accordance with clause 15
'the Initial Term'	means the initial term of the Agreement as set out in the Schedule
'the Period Discount'	means the discount offered to the Customer by the Company for entering into the Agreement as set out in the Schedule
'Premium'	means the aggregate annual maintenance charge at the Commencement Date in respect of each item of Equipment as set out in the Schedule payable in advance at the intervals set out in the Schedule;
'the Schedule'	means the schedule to which these Conditions are appended
'the Site(s)'	means the premises at which the Equipment is installed as set out in the Schedule
'the Services'	means the services to be provided by the Company as set out in clause 2

### 2. Maintenance Services

During the continuance of the Agreement the Company shall provide the Customer with the following Services in respect of the Equipment:

#### (1) Corrective Maintenance

Upon receipt of notification from the Customer that the Equipment has failed or is malfunctioning the Company shall during Business Hours rectify any breakdown or failure of any of the components of the Equipment or its operating system causing stoppage of its functions and necessitating repair to or replacement of such components before the Equipment can resume working and/or repair or replacement of any component of the Equipment not causing stoppage of the functions but which is identified as a result of a diagnostic check and which necessitates the Equipment being taken out of use for such repair or replacement. Such corrective maintenance to include supply of loan or replacement Equipment. Notification of faults must be made to the Company's nominated service control.

#### (2) Response Time

On receipt of a request for corrective maintenance in accordance with the Schedule the Company undertakes to use its reasonable endeavours to despatch a suitably qualified service engineer to the relevant Site within the response time set out in the Schedule. Emergency corrective maintenance will be provided as soon as practicable after receipt of a request by the Customer therefor

### 3. Exceptions

(1) The Services do not include any maintenance of the Equipment which is necessitated as a result of any cause other than fair wear and tear or the Company's neglect or fault including without limitation:

- (a) failure or fluctuation of electrical power, air conditioning, humidity control or other environmental conditions;
- (b) accident, transportation, neglect, misuse or default of the Customer, its employees or agents or any other third party;
- (c) any fault in any attachments or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment including but not limited to telecommunications equipment;
- (d) act of God, fire, flood, war, act of violence, or any other similar occurrence;
- (e) any attempt by any person other than the Company's personnel to adjust, repair, convert or maintain the Equipment;
- (f) software faults or viruses;
- (g) use of the Equipment other than for data processing purposes for which it was designed; or
- (h) use of consumables which result in repetitive service calls or abnormal wear and tear.

(2) The Company will (if it able so to do) at the request and expense of the Customer repair or replace any part of the Equipment which has failed due to a cause other than fair wear and tear or due to the Company's neglect or fault.

(3) The Services do not include:

- (a) service other than at the Site(s) (or such other premises as the Company shall have approved in writing);
- (b) repair or renewal of all consumables as specified by the manufacturer of the equipment including but not limited to tapes, printing cartridges, printheads, laser consumables or mice;
- (c) maintenance or support of the operating system of any computer unless expressly included in the Schedule;
- (d) electrical or other environmental work external to the Equipment;
- (e) maintenance of any attachments or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment;
- (f) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment;
- (g) painting or refurbishing of the Equipment;
- (h) changes to or alteration of the Equipment;
- (i) installation, moving or removal of the Equipment other than for repair;
- (j) unjamming or fitting of consumable supplies;
- (k) loading or uninstalling software, applications or data;
- (l) software support services;

### 4. Premium

(1) In consideration of the Services the Customer shall pay the Premium periodically in advance as set out in the Schedule. The Premium shall be paid without deduction, set off or prior demand and no payment shall be considered made until it is received by the Company.

(2) Any charges payable by the Customer hereunder in addition to the Premium shall be paid within 30 days after receipt of the Company's invoice therefore without any deduction or set off.

(3) The Company shall be entitled at any time and from time to time to increase the Premium by giving to the Customer not less than 90 days prior written notice provided that such increase shall not exceed a percentage equal to the percentage increase in the Retail Premiums Index published by the Central Statistics Office for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this sub-clause (in the case of second or subsequent increase up to the date of such notice provided further that no increase may be made pursuant to this sub-clause until a period of 12 months has elapsed since the date on which the immediately preceding increase came into effect pursuant to this sub-clause.

(4) The Company shall be entitled to recover the Premium, notwithstanding that performance of the Services may not have taken place. The time of payment of the Premium shall be of the essence of the Agreement. Receipts for payment will be issued only upon request.

(5) If the Customer fails to make any payment by the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (a) cancel the Agreement or suspend any further deliveries of the Goods or performance of the Services;
- (b) appropriate any payment made by the Customer as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

(c) charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum above the base rate of Barclays Bank plc 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).

(6) The Premium and any additional charges are exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

**5. Additional Charges**

- (1) The Company shall make an additional charge, in accordance with its standard scale of charges from time to time in force, for service visits, repairs or replacements:
- (a) made at the request of the Customer by reason of any fault in the Equipment due to causes not covered by the Services; or
  - (b) made at the request of the Customer but which the Company finds are frivolous or not necessary;
  - (c) for corrective maintenance of equipment not covered by this Agreement which the Company agrees to provide provided always that it shall not be obliged to carry out such works.

**6. Replacement**

- (1) The Company reserves the right to replace the whole of the Equipment or any part or parts thereof which may be found to be faulty or in need of investigation. If identical Equipment is not available for replacement the Company will instal replacement Equipment of a higher specification provided always that if the permanent replacement Equipment is materially different the Company reserves the right to increase the Premium by not less than 30 days notice in writing to the Customer in accordance with the Company's standard charges from time to time.
- (2) If the permanent replacement parts or equipment is not equipment which is identical in all material respects to the Equipment replaced the Company shall inform the Customer in writing.
- (3) Within 5 business days of being informed of replacement of non-identical equipment the Customer shall have the right to request that the replacement equipment or any part or parts thereof be removed and either the Equipment be put back or other equipment materially identical to the Equipment be installed and the Company shall comply with such request as soon as reasonably possible.
- (4) The replacement equipment shall become the property of the owner of the Equipment. The Equipment or any part or parts thereof removed shall become the property of the Company and the Customer warrants that either it shall have a free and unencumbered title to such replaced parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consents and authorities to part with possession and give good title to the replaced parts.
- (5) The provisions of the Agreement shall apply to all replacements and renewals of any part or parts of the Equipment made by the Company.
- (6) Subject to the warranty set out the Company reserves the right to supply new, second-hand or reconditioned parts in the performance of its duties.

**7. Duration**

The Agreement shall commence on the Commencement Date and shall continue (subject to early termination in accordance with these Conditions) for the Initial Term and thereafter from year to year until terminated by the Company giving the Customer or the Customer giving the Company not less than 90 days prior written notice to expire on the last day of the Initial Term or any subsequent anniversary thereof.

**8. Customer's obligations**

During the continuance of the Agreement the Customer shall;

**Use and Care of the Equipment**

- (1) ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;
- (2) not make any modification to the Equipment without the Company's prior written consent;
- (3) keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment;
- (4) ensure that the external surfaces of the Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time;
- (5) save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit, or authorise anyone other than the Company to carry out any adjustments, repairs or maintenance of the Equipment;
- (6) use on the Equipment only such operating supplies as the manufacturer shall recommend in writing and if such use results in repetitive service calls or abnormal wear and tear then the Company will be entitled to make an additional charge for the Services provided as a result;
- (7) notify the Company in writing if any of the Equipment is intended to be moved and or has been moved from Site or if any of the Equipment has been removed from service;
- (8) not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Company;
- (9) take reasonable precautions to avoid damage to the Equipment;

**Access**

- (10) provide the Company with full and safe access to the Equipment for the purposes of the Agreement;
- (11) provide adequate working space around the Equipment for the use of the Company's personnel and shall make available such reasonable facilities as may be requested from time to time by the Company for the storage and safekeeping of test equipment and spare parts;
- (12) where practicable provide a suitable vehicle parking facility for use by the Company's personnel which is free from any legal restrictions and is close to the relevant Site;
- (13) ensure in the interest of health and safety that the Company's personnel, while at the relevant Site for the purposes of the Agreement, are at all times accompanied by a member of the Customer's staff familiar with the Site and safety procedures;

**Notification and Information**

- (14) promptly notify the Company if the Equipment needs maintenance or is not operating correctly. Failure by the Customer so to notify the Company within 24 hours of the Customer first becoming aware of such failure or incorrect working shall free the Company from all obligations to investigate or correct such failure or incorrect working;
- (15) make available to the Company such programs, operating manuals and information as may be necessary to enable the Company to perform its obligations hereunder and shall if requested by the Company provide staff familiar with the Customer's software and operations, which staff shall co-operate fully with the Company's personnel in the diagnosis of any malfunction of the Equipment;
- (16) make available to the Company free of charge all facilities and services reasonably required by the Company to enable the Company to perform the Services including without limitation computer runs, memory dumps, print-outs, data preparation, office accommodation and photocopying;

**Miscellaneous**

- (17) provide such telecommunication facilities as are reasonably required by the Company for testing and diagnostic purposes at the Customer's expense;
- (18) keep full security copies of the Customer's software, programs and computer records and carry out appropriate system management functions in accordance with best computing practice. The master copies of software or programs are not to be released by the Customer and the Company is to be given only copies thereof if it requests;
- (19) not to use the Equipment other than for data processing services for which it was designed.

**9. Customer's Warranty**

- (1) The Customer warrants and undertakes to the Company that it is the owner of the Equipment and that it has full power and authority to enter into this Agreement and permit the Company to perform its services.

- (2) The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of paragraph (1) above.

#### **10. Spare Parts and Manuals**

- (1) The Company shall not be liable for any delay in performing its obligations hereunder if any recommended spare parts become obsolete.
- (2) The Company shall retain ownership of all diagnostic materials or manuals supplied by it. If such manuals or materials are stored at the Site(s) they shall be returned on demand.

#### **11. Liability and Warranties**

- (1) The Company warrants that it will use reasonable skill and diligence in performing the Agreement and that it shall have free and unencumbered title to any replacement parts which will be of satisfactory quality. The Company does not warrant that the Services or any additional services will cause the Equipment to operate without interruption or error.
- (2) The above warranty is given by the Company subject to the following conditions:
- (a) the Company shall be under no liability in respect of any defect in the Services arising from any information or instruction supplied by the Customer;
- (b) the Company shall be under no liability in respect of any defect in the Services arising from wilful damage, negligence, abnormal working conditions, failure to follow the Company's written instructions, misuse or alteration or repair of the Equipment without the Company's approval;
- (c) the Company shall be under no liability if the Premium has not been paid by the due date for payment;
- (3) 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.
- (4) Any claim by the Customer which is based on any defect in the Services shall be notified to the Company 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.
- (5) Where any valid claim in respect of the Services is notified to the Company in accordance with these Conditions, the Company shall be entitled to reperform the Services in which event the Company shall have no further liability to the Customer.
- (6) Except in respect of injury to or death of any person resulting from the Company's or that of its employees' agents or sub-contractors' negligence or damage suffered by the Customer as a result of any breach of the obligations implied by, as applicable, section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or section 8 of the Supply of Goods (Implied Terms Act) 1973 (for which no limit applies) the liability of the Company under the Agreement in respect of each event or series of connected events shall not exceed the aggregate Premium during the Initial Term. If a number of events give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- (7) The Company shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Equipment or loss of or spoiling of the Customer's software, programs or data) resulting from any breakdown of or fault in the Equipment unless such breakdown or fault is caused by breach of the warranty set out above.
- (8) Notwithstanding anything else contained in these Conditions the Company shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same. If a number of events of default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- (9) The Company shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up-to-date security copies of the software, programs or data it uses, in accordance with best computing practice.
- (10) Any replacement equipment or parts provided by the Company as part of the Service are supplied without warranty save for the benefit of such warranty or guarantee as is given by the manufacturer or supplier to the Company.

#### **12. Customer's Warranty**

- (1) The Customer warrants to the Company that it has prior to the making of the Agreement disclosed to the Company all faults or defects in the Equipment or operating system which exist at or immediately prior to the Commencement Date.
- (2) The Customer shall indemnify the Company and keep the Company fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors, by any defect in the design or workmanship of the Equipment or any breach of its warranty at clause 13(1) or breach of its obligation under these Conditions.
- (3) The Customer hereby warrants to the Company that the Customer has not been induced to enter into the Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Agreement and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind the Agreement.

#### **13. Confidentiality and Restrictive Covenants**

- (1) Each party shall treat as confidential all information obtained from the other pursuant to the Agreement 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 Agreement, 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.
- (2) Subject to Clause 14(3) the Customer hereby agrees that it shall not during the duration of the Agreement and for a period of 12 months thereafter:
- (a) solicit or entice away or seek to entice away from the Company or offer employment or engagement to any member of its staff employed in the supply of the Goods or provision of the Services;
- (b) employ or engage any member of the Company's staff to supply goods the same as the Goods or perform services materially the same as the Services.
- (3) The Customer acknowledges that if it were to recruit or appoint any of the Company's staff then the Company would incur substantial time and monies in recruiting a replacement. In the event that the Customer is in breach of the provisions of Clause 14(2) then it shall pay to the Company on demand a sum equal to the Premium for the 12 months prior to the said breach, as liquidated damages to compensate it for such loss and expense.

#### **14. Termination**

- (1) If in its opinion the Company considers that all or part of the Equipment needs reconditioning it will notify the Customer together with its estimate of the cost thereof. If the Customer does not accept the quote to recondition the Equipment within 30 days of receipt thereof the Company may by not less than 30 days prior written notice cancel that part of the Agreement insofar as it relates to the Equipment which requires reconditioning.
- (2) 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 destroyed or damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred the Company's decision shall be final and binding on the Customer) the Company reserves the right to terminate the Agreement, by giving not less than 30 days 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 Company's sole liability shall be to repay to the Customer a fair proportion of the Premium which has been paid in advance by the Customer.
- (3) On termination of the Agreement in accordance with the provisions of sub-clauses (1) and (2) the Customer shall be entitled to reimbursement of a pro-rata part of the Premium paid in advance calculated on a time basis and item by item basis after adding back to the Premium the Period

Discount. In calculating any damages payable to the Company upon termination of this Agreement the Period Discount shall be added back to the Premium.

(4) Notwithstanding anything else contained herein, the Agreement may be terminated:

- (a) by either party forthwith on giving notice in writing to the other if the other commits any breach of any term of the Agreement (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
  - (b) 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 become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.
- (5) Any termination of the Agreement 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.
- (6) Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees) insurrection or riots embargoes, container shortages, wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority. Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to the event of force majeure.

#### **15. General**

- (1) The Customer shall not assign the Agreement without the prior written consent of the Company.
- (2) No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by the Company of any breach of the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (3) The Agreement shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.
- (4) The Company is a member of the group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- (5) The Company shall provide and the Customer shall accept the Services subject to the Conditions and the Schedule, which shall govern the Agreement to the exclusion of any other terms and conditions. This shall also apply where a Customer Purchase Order has been accepted in lieu of a signed contract. No variation to the Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.
- (6) The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the parties to it by any other person.

#### **16. Anti-bribery policy (The Anti Bribery Act 2010)**

It is our policy to conduct all of our business in an honest and ethical manner. We take a zero-tolerance approach to bribery and corruption and are committed to acting professionally, fairly and with integrity in all our business dealings and relationships wherever we operate by implementing and enforcing effective systems to counter bribery. This applies to all individuals working at all levels and grades, including senior managers, officers, directors, employees (whether permanent, fixed term or temporary, consultant, contractors, trainees, seconded staff, homework's, casual workers and agency staff), volunteers, interns, agents, sponsors, or any other person associated with us including business partners who sell our services on our behalf and our customers. If you are in any doubt, or suspect someone may be acting in a way which contravenes the Bribery Act 2010, please speak to us.

##### **Definition**

A bribe is an inducement or reward offered, promised or provided in order to gain any commercial, regulatory or personal advantage. Our zero-tolerance approach includes offering a bribe, receiving a bribe or attempting to bribe a foreign official

#### **17. Notices**

- (1) 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 Conditions 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

#### **18. Severability**

- (1) Notwithstanding that the whole or any part of any provision of the Conditions may prove to be illegal or unenforceable the other provisions of the Conditions and the remainder of the provision in question shall remain in full force and effect.
- (2) In the event of any inconsistency between the Conditions and the Schedule then the Schedule shall prevail over the Conditions.

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