

THE CUSTOMERS ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9.

1. INTERPRETATION

1.1 Definitions:

Additional Charges: the charges to be calculated by the Supplier on a time and materials basis at its then prevailing rates in respect of the Excepted Services pursuant to clause 6 or Curative Maintenance in the circumstances set out in clause 4.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 3.2.

Equipment: the items of computer hardware identified by type and serial number in the Schedule

Excepted Services: those services referred to in clause 6 below which do not fall within the Services

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Partner: CARE COMPUTERS & SERVICES LIMITED registered in England and Wales with company number 02799021.

Place of Use: that part of the Customer's premises at the Site where the Equipment is installed and operated

Site: means the Customer's address specified in the Schedule

Services: the services, supplied by the Supplier to the Customer, being the provision of Preventative Maintenance, Curative Maintenance and Mandatory Engineering Changes as defined in clause 4 below

Supplier: CARE COMPUTERS & SERVICES LIMITED registered in England and Wales with company number 02799021.

Supplier Materials: has the meaning set out in clause 3.1(k).

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. SUPPLY OF SERVICES

- 2.1 In consideration of the payment from time to time and set out herein the Supplier shall supply the Services to the Customer.
- 2.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 2.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Supplier does not warrant that the Services will cause the Equipment to operate without interruption or error.
- 2.7 Subject to the foregoing all conditions, warranties, term and undertakings, express or implied, statutory or otherwise, in respect of the performance by the Supplier of the Maintenance Services or Excepted Services hereunder are hereby excluded.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) prepare the Customer's premises for the supply of the Services;
 - (e) take all reasonable precautions to protect the health and safety of the Supplier's employees, agents and sub-contractors while on the Customer's Site
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - (g) to make available the Equipment and to supply all documentation and other information necessary for the Supplier to diagnose any fault in the Equipment;
 - (h) to notify the Supplier in writing within seven days of any change to the Equipment or Site;
 - (i) to take reasonable care of and adequately insure any equipment loaned by the Supplier to the Customer and for so long as any equipment so loaned shall be at the Site the same shall be at the Customer's risk;
 - (j) to pay to the Supplier the then current list price of any equipment loaned by the Supplier to the Customer which shall be destroyed or damaged in breach of this clause 3, and
 - (k) keep and maintain all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

- 3.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 3.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4. SERVICES

- 4.1 The Services shall comprise the provision by the Supplier of 'Preventative Maintenance' 'Curative Maintenance' and 'Mandatory Engineering Changes' (as respectively defined in clauses 4.2, 4.3 and 4.4 below in respect of each item of Equipment at the Place of Use.
- 4.2 Preventative Maintenance shall comprise:
- 4.2.1 the routine inspection and testing (by attendance on Site or remotely) by the Supplier of each item of Equipment in accordance with the Supplier's recommendations therefore and
 - 4.2.2 the carrying out by the Supplier of such repairs, replacement of parts, cleaning, lubrication or adjustment to each item of Equipment, as the Supplier shall judge necessary as a result of said inspection and testing (in its reasonable discretion).
- 4.3 Curative Maintenance shall comprise:
- 4.3.1 upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance On Site or remotely) by the Supplier of any fault reported in an item of Equipment; and
 - 4.3.2 the carrying out by the Supplier of such repairs, replacement of parts, cleaning, lubrication or adjustment as the Supplier shall judge necessary (in its reasonable discretion) to remedy the said fault.
 - 4.3.3 the provision of replacement equipment if the Supplier is unable to remedy any fault to the Equipment within eight (8) hours of the arrival of the Supplier's engineer at the site.
- 4.4 Mandatory Engineering Changes shall comprise the implementation of such mandatory alterations, adjustments, additions or modifications to the Equipment, as the Supplier shall from time to time prescribe (in its reasonable discretion).

5. TIMES FOR MAINTENANCE SERVICES

Curative Maintenance will be provided upon request by the Customer between the hours of 9 a.m. and 5.30 p.m. ("Business Hours") on Business Days. The Supplier will use its reasonable endeavours to respond to a request for Curative Maintenance within the following times:

	Response Times
Telephonic & Remote Response within	1 Hour
Onsite Engineer for Server & Network within	4 Hours
Onsite Response for Workstations & Printers within	8 Hours

- 5.2 The response time shall commence from the time of receipt of any telephone call, fax or email made by the Customer notifying the Supplier of a fault in the Equipment.
- 5.3 For the avoidance of doubt the Supplier shall not be obliged to undertake any Curative Maintenance outside Business Hours and/or on any day that is not a Business Day and if the Customer shall request Curative Maintenance at such hours and/or on such days the Supplier shall be entitled to charge the Customer additional charges in accordance with clause 7.
- 5.4 Preventative Maintenance and Mandatory Engineering Changes will be provided at such times during Business Hours as shall from time to time be agreed between the Supplier and the Customer.

6. EXCEPTED SERVICES

- 6.1 The Services shall not include the correction of any fault due to:
1. the Customer's failure to maintain a suitable environment for the Equipment at the Place of Use in accordance with the Supplier's written specifications including without limitation failure to maintain a constant power supply, air conditioning or humidity control.
 2. the Customer's neglect or misuse of the equipment or its failure to operate the Equipment in accordance with the Supplier's instruction manuals or for the purposes for which it was designed.
 3. the alteration, modification or maintenance of the Equipment by any party other than the Supplier without the Supplier's prior written consent.
 4. the transportation or relocation of the Equipment save where these have been performed by or under the direction of the Supplier.
 5. the use of defective or inappropriate supplies with the Equipment;
 6. any defect or error in any software used upon or in association with the Equipment. All backups & reinstallation of operating systems is solely the responsibility of the customer.
 7. any accident or disaster affecting the Equipment including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary.
 8. the Customer's failure, inability or refusal to afford the Supplier's personnel proper access to the Equipment;
 9. the painting or refinishing of the Equipment;
 10. the relocation or transportation of the Equipment;
 11. electrical work external to the Equipment;
 12. the provision of supplies for use in association with the Equipment;
 13. with the exception of Mandatory Engineering Changes, any modification, alteration of, attachment to the Equipment or removal of the same.
- 6.2 The Supplier shall upon request by the Customer provide all or any of the Excepted Services referred to in clause 6.1 above but shall be entitled to charge for the same by levying Additional Charges in the manner described in clause 6.4 below.
- 6.3 Without prejudice to clause 6.2 above the Supplier shall be entitled to levy Additional Charges in the manner described in clause 6.4 below if Maintenance Services are provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.
- 6.4 Additional Charges shall be levied by the Supplier monthly in arrears and shall be payable by the Customer within 30 days of receipt of an invoice.

7. CHARGES AND PAYMENT

- 7.1 The Charges for the Services shall be on a time and materials basis:
- (a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Schedule;
 - (b) the Supplier's standard daily fee rates for each individual are calculated on the basis of Business Hours worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of time-and-a-half for evening out of hours and Saturdays, or double time for Sundays, of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 7.1(b); and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 7.2 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase three months before the proposed date of

the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within three weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Customer.

7.3 The Supplier shall invoice the Customer as specified on the contract front page in advance of the Services.

7.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7.8 The Charges shall not include the cost of any Excepted Services.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

8.3 All Supplier Materials are the exclusive property of the Supplier.

9. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;

- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of the Equipment, software, data or information;
- (f) loss of damage to the Equipment;
- (g) loss of damage to goodwill; and
- (h) any indirect or consequential loss.

9.3 Subject to clause 9.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to { . . }.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 This clause 0 shall survive termination of the Contract.

10. CUSTOMER'S WARRANTY

10.1 The Customer warrants and undertakes to the Supplier that it is the owner of the Equipment and that it has full power and authority to enter into this agreement and permit the Supplier to perform the Services.

10.2 The Customer undertakes to indemnify and hold harmless the Supplier against any loss or damage that the Supplier may suffer as a result of a breach by the Customer of clause 10.1 above.

11. REPLACEMENT OF PARTS

11.1 The Supplier reserves the right to supply new, second-hand or reconditioned replacement parts in the performance of its duties hereunder.

11.2 Any parts of the Equipment replaced by the Supplier pursuant to clause 11.1 above ("Replaced Parts") shall, upon replacement, become the property of the Supplier 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 it good title to the Replaced Parts.

12. CUSTOMER'S REPRESENTATIVES

12.1 The Customer shall communicate to the Supplier upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by the Supplier of the Maintenance Services during the currency of this agreement. The Customer shall forthwith inform the Supplier of any change in the identity of any such person(s) or department.

13. TERMINATION

13.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party three months' written notice.

13.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer fails to give any notice required by virtue of clause 3.1(h).

- (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.

13.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 13.2(c) to clause 13.2(e) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Equipment which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

15. GENERAL

15.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

15.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

15.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (d) Data that resides in the Equipment ("Data") is the property of the Customer and the Supplier shall:
 - (i) keep the Data secret and confidential;
 - (ii) not use or exploit the Data in any way;
 - (iii) not directly or indirectly disclose or otherwise make available any of the Data to any person, except as expressly permitted in writing by the Customer;
 - (iv) not make any copies in any format of the Data, except as expressly permitted in writing by the Customer;
 - (v) use reasonable endeavours to ensure that no person gets access to any Data; and
 - (vi) inform the Customer immediately on becoming aware, or suspecting, that Data has been disclosed to, or otherwise obtained by, an unauthorised third party.

15.4 Entire Agreement.

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

15.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

15.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.9 Third parties. No one other than a party to the Contract shall have any right to enforce any of its terms.

15.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

15.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

15.12 Security, privacy and data protection.

- (a) **Partner Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) Care Computers will be the primary administrator of the Services and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Partner; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Partners administrative privileges; (iii) Partners privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customers agreement with its Partner; and (iv) Partner may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data for the sole purpose of supporting the customer.
- (b) Customer consents to the processing of personal information by Care Computers and its agents to facilitate service support and maintenance.
- (c) As and to the extent required by law, Customer shall notify the individual users of the Services that their data may be processed for the purpose of disclosing it to the law enforcement of other governmental authorities as directed by Partner or as required by law, and Customer shall obtain users consent to the same.
- (d) Customer appoints Partner as its agent for the purposes of interfacing with and providing instructions to 3rd parties for purposes of service support and maintenance.

END OF DOCUMENT
