

ADM Computer Services Limited Maintenance and Service Agreement

Terms and Conditions

1. Maintenance Service Provided

- 1.1. Subject to the terms of this Agreement. ADM will provide such remedial services as may be necessary to maintain the equipment listed in the Schedule in a satisfactory operating condition.
- 1.2. The Service Charge covers all costs associated with service and maintenance of the equipment, including all labour, travel, parts, spares and administration, subject to all conditions and exclusions contained within the Agreement.
- 1.3. The Maintenance Service covers the repair of malfunctioning equipment, including labour and the replacement of unserviceable parts associated with normal wear and tear, preventative maintenance will be carried out at the discretion of ADM.
- 1.4. Where it is necessary to remove any item of equipment for repair, ADM shall provide on request, on a temporary basis and free of charge, replacement equipment to a specification that shall maintain the operating integrity of the system.
- 1.5. Contract Duration
 - 1.5.1. The Agreement is based on a rolling monthly Contract;
 - 1.5.2. The contract commences from the date that ADM officially issues in writing an agreement number;
 - 1.5.3. The period of the Agreement shall be automatically extended for a further year except in the case of 30 day written notice of termination.

2. Coverage and Response

- 2.1. The Service Contract provides for all call outs to the Customer's premises, as follows:
 - 2.1.1. Between 09:00 hours and 17:00 hours, Monday to Friday, but excluding Public and Bank Holidays.
 - 2.1.2. Service required outside the hours stipulated in clause 2.1.1. shall be charged at the prevailing out of hours charges.
- 2.2. ADM will respond to service calls within 4 working hours from receipt of the Customer's request (whether by telephone or in writing) if received during the coverage period outlined in clause 2.1.1.
- 2.3. ADM will endeavour to provide temporary equipment as outlined in clause 1.4, and if requested by the Customer, normally within 24 hours from the time of the call out. We will endeavour, in the case of loan servers, to provide similar disk capacity but cannot guarantee similar processing capacity unless special terms have been previously agreed. The provision of a loan server may not provide the same capacity or facilities as production servers. The provision of a loan server within 24 hours will be on a best endeavour basis only.

3. Responsibilities

- 3.1 Any parts permanently removed and replaced shall become the absolute property of ADM. Those parts replaced shall become the property of the Customer. Colour matching equipment can only be provided on a best endeavour basis.
- 3.2 The title to any temporary equipment referred to in section 1.4 shall remain vested in ADM. The Customer shall provide insurance cover and accept all risks during the period of which the temporary equipment remains on his premises.
- 3.3 The Customer shall use the equipment only for such purposes and only with such operating supplies as meets the specification in all aspects with the manufacturers recommendations as contained in the relevant manuals.
- 3.4 The Customer shall ensure that all electrical and cabling installations external to the equipment and accessories not previously supplied by ADM, shall comply with relevant regulations.
- 3.5 Defects in the equipment supplied by ADM arising as a result of the following, are not covered by this Maintenance Service Agreement:-
 - 3.5.1. Faulty or negligent handling or operation.
 - 3.5.2. Accidental damage caused by electrical, chemical and electro chemical influences.
 - 3.5.3. Damage caused by excessive humidity.
 - 3.5.4. Act of God, force majeure.
- 3.6 In the event of equipment requiring repairs and maintenance following a breach by the Customer of the conditions and/or otherwise, excluded from the scope of the Agreement, ADM reserves the right to charge for such repairs and maintenance at normal hourly rates.
- 3.7 The Customer shall not permit persons other than authorised representatives of ADM to affect any replacement parts, maintenance, adjustments or repairs to the equipment during the Agreement Term.
- 3.8 The Customer shall allow access to the equipment for maintenance purposes.
- 3.9 In the event of ADM attending the installation(s) in response to a service call and access being denied, then, ADM having fulfilled their contractual obligations, reserve the right to charge for the second visit at normal hourly rates.
- 3.10 Equipment removed from the Customers premises and/or relocated to other premises, shall be excluded from the Agreement at the discretion of ADM. ADM reserve the right to renegotiate the maintenance charges for such equipment.
- 3.11 ADM reserve the right to subcontract in whole or part, the provisions of Maintenance Service provided. ADM shall remain responsible for the discharge of its responsibilities and liabilities contained in this Agreement.

4. **Limitation of Liability and Indemnity**

- 4.1 No warranties, conditions or representations expressed or implied, are to be incorporated into this Agreement other than those expressly stated herein.
- 4.2 Except in so far as ADM shall be prevented or restricted in law from limiting or excluding its liabilities (if any) arising from, or in connection with, the performance of this contract; its liabilities and their limitations shall be as follows:-
 - 4.2.1. The Company's liability (both in contract & tort) in respect of defects in the goods shall be limited to the replacement of faulty items or material, or the issue of credit notes in respect thereof, or the granting of a refund or other such compensatory measures as the Company at its discretion considers appropriate in the circumstances. Such measures shall relate only to the actual faulty items or their value, and the Company shall not in any circumstances be under any liability to the Buyer in respect of indirect or consequential loss or damage or loss of profits, revenue, business or goodwill sustained by the Buyer PROVIDED, always that these conditions do not exclude or restrict the Company's liability for death or personal injury arising from its negligence. All conditions, warranties, guarantees and representations, express or implied by statute, common law or otherwise in relation to the goods (other than any liability within the Company is not permitted by law to exclude or restrict) are hereby excluded.
 - 4.2.2. In no event shall ADM be liable to the Customer for any further losses, costs or damages suffered or incurred as a result of any breach by ADM of its obligations under the Agreement, including any consequential loss, loss of profits, business revenue or savings.
 - 4.2.3. ADM shall not be liable to the Customer for any damage or corruption of software, data loss or programme failure.
 - 4.2.4. ADM shall not be responsible for the replacement of batteries, e.g. UPS batteries, portable computers.
 - 4.2.5. In the event of a re-installation of unsupported software, ADM will endeavour to carry out the re-installation to the best of our abilities. However, ADM shall not be liable should further support be required, or if support is no longer available from the manufacturer.
 - 4.2.6. ADM shall not be responsible for consumables, as defined by the manufacturer.

5. Maintenance Charges and Payments

- 5.1. The Maintenance Charge is as per the Agreement.
- 5.2. Payment of the Maintenance Agreement shall be made in advance on presentation of an invoice by ADM.
- 5.3. Invoices for the Maintenance Agreement shall be paid within 30 days.
- 5.4. ADM reserve the right to suspend service for non-payment of the Service Agreement within 7 days and give notice of termination within 28 days.
- 5.5. Subject to the provisions outlined in clauses 3.5, 3.6 and 3.10 of this Agreement, ADM shall reserve the right to make additional charges at standard hourly rates, with the prior written agreement of the Customer.
- 5.6. In the event that the Customer does not accept these repair or maintenance charges referred to in clause 5.5 above, the result of which it is the considered opinion of ADM that the integrity and/or effective operation of the equipment and/or associated systems covered by this Agreement, is prejudiced; then ADM reserve the right to give notice of termination of this Agreement.
- 5.7. ADM undertake to notify the Customer at least 28 days in advance, of increased charges during the term of this Agreement.
- 5.8. Invoices other than those relating to the Agreement, are payable within 30 days.

6. Miscellaneous Clauses

- 6.1 Severability
Any provisions of this Agreement which are illegal, void or unenforceable shall be deemed to be several from the remaining provisions which shall remain in full force and effect.
- 6.2 Variations
This Agreement shall constitute the entire Agreement between the parties relating to the Maintenance and Service. Any variation of any terms of this Agreement shall be in writing and signed by the parties or their daily authorised representatives. Any previous Agreement between the parties relating to the subject matter hereof is deemed terminated by mutual consent.
- 6.3 Waiver, etc.
Failure by ADM to enforce any provision of this Agreement shall be construed as a waiver of any ADM rights.
If ADM does not waive any of its rights in relation to a breach of this Agreement by the Customer, such waiver shall not be construed as a waiver of such rights in relation of any other breach.
- 6.4 Notices
All notices or other communications shall be sent by fax or first class post to the parties at their respective addresses set out in the Agreement or at any addresses subsequently notified to the other party.
- 6.5 Law Applicable
The Agreement shall be subject to and construed in accordance with English Law. The parties submit to the jurisdiction of the English Courts for the settlement of any disputes arising under or in connection with this Agreement.

- 6.6 **Additional Equipment/Equipment Removed**
Should the Customer wish to add further equipment to the schedule attached to and governed by this Agreement during the first 6 months of any annual period, it will be charged for at the full annual rate. Any equipment added to the schedule under this agreement after the first 6 months of any annual period will be charged for on a pro-rata basis until the renewal date. No refunds will ensue for any equipment removed from an existing Agreement.
Any equipment not supplied by ADM must be examined by ADM before acceptance onto the schedule attached hereto.
ADM reserve the right to refuse equipment which may be requested for cover under a Maintenance Agreement either prior to or at the end of a previous Maintenance Agreement term.
- 6.7 It is the customer's responsibility to check Maintenance Quotations prior to the Maintenance Agreement being accepted.
In this regard, ADM cannot be held responsible for any equipment the customer may later discover is not included within the Maintenance Agreement for which they require a repair to be carried out. Under such circumstances, normal charges will apply.
- 6.8 ADM recommend that customers take adequate precautions relating to data security (e.g. a daily tested back-up of all important data) as ADM cannot be held responsible for any data loss under any circumstances (see Clause 4.2.3).
- 6.9 This Agreement does not cover the removal of malicious codes such as viruses, Trojans, Spyware, Adware etc.
- 6.10 This Contract is not transferable without the written consent of ADM.