

## Maintenance Terms and Conditions

- (1) **"Chess"** **Chess Limited** incorporated and registered in England and Wales with company number 2797895 whose registered office is at Bridgford House, Heyes Lane, Alderley Edge, Cheshire SK9 7JP.
- (2) **"Customer"** this is a reference to the person named on the Maintenance Agreement.

### 1. DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

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

**Commencement Date:** the date specified on the Maintenance Agreement.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance Services, who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure. For the avoidance of doubt the Charges and terms of this Agreement shall be deemed to be Confidential Information of Chess.

**Excluded Causes:** means:

- (a) a defect in the manufacturer's design of the Maintained Equipment;
- (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (c) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by Chess;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than Chess or its employees or agents unless approved by Chess in accordance with clause 4(f);
- (e) the Customer or a third party moving the Maintained Equipment;
- (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
- (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (h) any failure caused by a software virus or similar;
- (i) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (j) the neglect or misuse of the Maintained Equipment.

**Excluded Maintenance:** any Maintenance Services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes; and any Maintenance Services in respect of any external, underground or overhead cabling; and any Maintenance Services to be carried out at the Location in excess of the number of onsite callouts specified in Schedule 2; and any Maintenance Services provided to equipment that is not Maintained Equipment.

**Good Working Order:** the Maintained Equipment operates in accordance with the Operating Manuals.

**Initial Period:** a period as stated on the Maintenance Agreement.

**Maintained Equipment:** the equipment specified on the Maintenance Agreement.

**Normal Business Hours:** 8:30am to 6:00pm GMT on a Business Day.

**Operating Manuals:** all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

**Renewal Period:** each successive 12-month period after the Initial Period for which this agreement is renewed.

**Term:** the Initial Period together with all Renewal Periods.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes faxes but not e-mail.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. MAINTENANCE SERVICES**

- 2.1 During the Term, Chess shall provide the Customer with the Maintenance Services for the Maintained Equipment. It is a condition of this agreement that the Customer provides to Chess such remote access as Chess may reasonably require in order to enable Chess to carry out its obligations remotely.
- 2.2 On the Customer informing Chess that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, Chess shall use all reasonable endeavours to carry out such repairs replacement of parts or adjustment as Chess shall deem necessary to remedy such fault.
- 2.3 On the Customer informing Chess outside of Normal Business Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, Chess shall use all reasonable endeavours to carry out such repairs replacement of parts or adjustment as Chess shall deem necessary to remedy such fault.
  - (a) Maintenance Services outside of Normal Business Hours shall incur charges for each of Chess's personnel reasonably required for the same. Any additional charges shall be calculated from when the personnel commence the Maintenance Services until such time as it is finished.

- 2.4 Chess shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.
- 2.5 Appropriately qualified engineers will carry the Maintenance Services in question.
- 2.6 Chess has no obligations to perform Maintenance Services if any payments by the Customer remain unpaid.

### **3. TIMES FOR MAINTENANCE SERVICES**

- 3.1 Chess commits to rectify faults in line with the following hours based upon the Agreed tier of service detailed on the Maintenance Agreement (this commitment is subject to non-prevention from circumstances outside Chess control):
  - 3.1.1 TIER 1: From the hours of 9.00am and 5.00pm Mondays to Fridays excluding weekends and public holidays
  - 3.1.2 TIER 2: From the hours of 9.00am and 5.00pm Mondays to Fridays including weekends and public holidays
  - 3.1.3 TIER 3: 24 hours a day including weekends and public holidays; or
  - 3.1.4 as otherwise defined on the Maintenance Agreement
- 3.2 Chess shall use its reasonable endeavours to ensure that response times to the Customers notification of a fault are not more than:
  - 3.2.1 8 working hours if the equipment has failed completely; or
  - 3.2.2 16 working hours if the equipment has failed partially.

### **4. REPLACEMENTS AND SPARE PARTS**

- 4.1 All spare parts and/or replacements provided by Chess to the Customer shall become part of the Maintained Equipment and the property of the Customer. Chess will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by Chess. All parts and components removed from the Maintained Equipment by Chess in the course of performing the Maintenance, shall no longer constitute part of the Maintained Equipment and will be the property of Chess. The Customer will assign to Chess, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by Chess in accordance with this clause 4.1.

### **5. CUSTOMER'S OBLIGATIONS**

The Customer shall:

- (a) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as Chess may give from time to time;
- (b) settle with Chess outstanding amounts owed under this agreement within the agreed settlement dates;
- (c) notify Chess promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (d) in the event of errors, by persons other than Chess' servants or agents, the Customer must pay Chess charges for reprogramming the Maintained Equipment due to such errors;
- (e) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to Chess, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Chess to perform the Maintenance Services while at the Location;

- (f) provide Chess with any information that is reasonably requested in the performance of the Maintenance Services;
- (g) take any steps reasonably necessary to ensure the safety of Chess's personnel when attending the Location;
- (h) not allow any person other than Chess to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of Chess;
- (i) not move the Maintained Equipment from the Location without the prior written approval of Chess (approval not to be unreasonably withheld or delayed);
- (j) only use supplies or materials supplied or approved by Chess (approval not to be unreasonably withheld or delayed).

## **6. EXCLUDED MAINTENANCE**

- 5.1 Under this maintenance agreement Chess accepts no obligations or liability whatsoever:
- 5.1.1 in respect of any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow Chess instructions (whether oral or in writing), misuse or alteration or repair of the Maintained Equipment without Chess approval;
  - 5.1.2 sums owing by the Customer to Chess remain unsettled;
  - 5.1.3 where loss is suffered by the Customer due to the Maintained Equipment neglecting to perform to its specifications and the failure is based on faults in the service provided by the network provider;
  - 5.1.4 in respect of any delay in the execution of any repair;
  - 5.1.5 in respect of remedying defects in electricity or network supply to the Maintained Equipment; defects caused by failures or surges of electrical power; failure of the Maintained Equipment due to changes in the electrical supply service or the public network.
  - 5.1.6 in respect of any defect arising due to circumstances beyond Chess reasonable control including (without limitation) flood, fire, lightning, war, sabotage, civil disturbance or governmental action, import regulations or embargoes.

## **7. CHARGES**

- 7.1 The Standard Maintenance Fees shall be due and payable in full to Chess annually in advance, within 30 days of receipt of a valid invoice from Chess. Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from Chess. Any charges for spare parts recoverable shall be due within 30 days of receipt of a valid invoice from Chess.
- 7.2 Chess reserves the right to charge interest at an annual rate of 8% above the base rate of Barclays Bank PLC, calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by Chess of the full amount, whether before or after judgment, together with reasonable administration fees and expenses in collecting any amount due and unpaid.
- 7.3 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.4 Chess may, at any time after the first anniversary of the Commencement Date, increase the Standard Maintenance Fees, provided that:
  - (a) the increase shall not exceed a percentage equal to the higher of 5% and the percentage increase in the Retail Prices Index published by the Office

for National Statistics (or its successor from time to time) 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 clause (in the case of the second or any subsequent increase) up to the date of this notice; and

(b) the increases shall be no more frequent than once in any 12-month period.

## **8. SUPPLIER WARRANTIES**

8.1 Chess represents and warrants to the Customer that:

- (a) the Maintenance Services and the Additional Services shall be performed:
  - (i) by an appropriate number of suitably qualified and experienced personnel;
  - (ii) using all reasonable skill and care; and
  - (iii) in accordance with all applicable laws and regulations in force from time to time.
- (b) Chess has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this agreement.

8.2 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

## **9. LIABILITY**

9.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

9.2 Subject always to clause 9.1, neither party shall be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
- (b) loss or corruption (whether direct or indirect) of data or information; or
- (c) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement.

9.3 Subject always to clause 9.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the greater of:

- (a) £100,000 and
- (b) The total Charges paid by the Customer to Chess during the 12-month period immediately preceding the date on which the cause of action first arose.

## **10. CONFIDENTIALITY**

10.1 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
  - (e) the parties agree in writing is not confidential or may be disclosed; or
  - (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 10.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
  - (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
- (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10.
- 10.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 10.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.
- 10.6 The provisions of this clause 10 shall continue to apply after termination of this agreement.

## **11. TERM AND TERMINATION**

- 11.1 This agreement shall commence on the Commencement Date and shall remain in force, unless terminated earlier in accordance with clause 11.2, for the Initial Period. The Term of the agreement shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement.
- 11.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
  - (b) the other party commits a material breach of any material Term of this agreement (other than failure to pay any amounts due under this

agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- (c) the other party:
  - (i) suspends, or threatens to suspend, payment of its debts;
  - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
  - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
  - (v) (being a partnership) has any partner to whom any of clause 11.2(c)(i) to clause 11.2(c)(iv) apply.
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to clause 11.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

11.4 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.5 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:

- (a) return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of this agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it shall provide written evidence no later than 14 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 10;
  - (b) the Customer shall immediately pay any outstanding amounts owed to Chess pursuant to this agreement.
- 11.6 Regardless of its obligations in this clause 11, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. clause 10 shall continue to apply to any retained documents and materials, subject to this clause 11.

**12. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the other party.

**13. ASSIGNMENT**

- 13.1 This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party [(which is not to be unreasonably withheld or delayed)].
- 13.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**14. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**15. NOTICE**

- 15.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery service at its principal place of business, or sent by fax to the other party's main fax number.
- 15.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax, at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 15.3 This clause 15 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

**16. ENTIRE AGREEMENT**

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 16.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 16.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

**17. VARIATION**

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

**18. SEVERANCE**

- 18.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 18.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**19. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

**20. THIRD-PARTY RIGHTS**

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

**21. GOVERNING LAW AND JURISDICTION**

- 21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).