

# **STANDARD MAINTENANCE TERMS AND CONDITIONS**

## **Future Technologies Ltd Maintenance Terms and Conditions**

### **1) MAINTENANCE SERVICE**

Subject always to the terms of this agreement, the Contractor shall use all reasonable endeavours to maintain the equipment in good working order and in particular shall undertake maintenance services (hereinafter referred to as "The scheduled maintenance services") and as follows:

#### **(a) Preventative Maintenance**

The contractor shall carry out routine maintenance at such periodic intervals as are specified in the Schedule hereto, provided always that where it is expedient in the opinion of the contractor such maintenance may be carried out at the time of corrective maintenance except where the aforementioned provision applies, routine preventative maintenance shall be carried out only at such times during the contractor's normal working hours as may be mutually agreed between the between the local area supervisor and the customer.

#### **(b) Corrective Maintenance**

In the event of a fault occurring in the equipment the contractor shall carry out corrective maintenance during the contractor's normal working hours and / or during such other period (s) and subject to such additional charges (s) as may be specified in the schedule hereto.

### **2) SERVICES PROVIDED**

- (a) The scheduled maintenance services do not include maintenance or repairs necessitated otherwise than by fair wear and tear or otherwise than by the neglect or default of the contractor, including but not limited to any misuse or default of the customer or any third party, failure or fluctuation of electric power humidity controls or other environmental conditions of faulty communication or data transmission lines.
- (b) The contractor will at the request and expense of the customer repair or replace any part of the equipment which requires maintenance or repair due to causes not covered by the contract.

### **3) ACCESS**

For the purpose of undertaking the schedules maintenance services the contractor shall have full and safe access to the equipment.

### **4) CUSTOMER ASSISTANCE**

- (a) The customer shall at the request of the contractor, make available to the contractors all necessary documentation and systems data relating to the equipment and shall upon request and for the assistance of the contractor in undertaking the schedules maintenance services provide staff familiar with the customers programs and/or applications which staff shall fully co-operate with the contractors personnel in the diagnose of any malfunction of the equipment.
- (b) The customer shall for the purposes of maintenance of the equipment, provide suitable working space and facilities and shall make available such safe storage of a suitable nature as may be requested from time to time by the contractor for the storage of test equipment and/or spare parts. The customer shall take all responsible precautions to ensure the care of such equipment and/or spare parts.
- (c) All charges and expenses incurred in fulfilling the obligations under sub-clauses (a) and (b) above shall be the liability of the customer.

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### **5) MAINTENANCE CHARGES**

- (a) In consideration of the schedules maintenance services the customer shall pay to the contractor the charges specified in the schedule hereto. The said charges are payable periodically in advance as specified in the schedule hereto and shall be paid by the customer within 30 days of receipt of the contractors invoice.
- (b) If the contractor's services are requested without responsible justification, or by reason of any fault in the equipment due to causes not covered by the schedules maintenance services, such services will be charged at the contractors standard charges for the time being in force.
- (c) Any additional charges arising otherwise than in respect of the schedules maintenance services shall be paid by the customer within 30 days of receipt of the contractors invoice.
- (d) The charges for the scheduled maintenance services and any additional charges payable by the customer hereunder do not include value added tax, which shall be paid by the customer at the rate and in the manner for the time being prescribed by law.
- (e) If any sum payable under this agreement is in arrears for more than 14 days then interest on a day to day basis shall accrue on such sum (as well after as before any judgement) from the due date of payment (both dates inclusive) at the rate of 4 per cent above the base rate of Lloyds Bank Plc for the time being in force

### **6) VARIATION OF MAINTENANCE CHARGES**

- (a) The charges specified in the schedules hereto shall remain fixed for the first twelve months of this Agreement after the said period of twelve months has expired the contractor shall be entitled to increase all or any of such charges at any time and from time to time to correspond to the contractors standard charges then in force upon giving to the customer three months prior written notice where such notice is given.
- (b) The customer shall have the right to terminate this agreement as from the date on which the proposed increase would take effect by giving to the contractor written notice of termination at least 30 days before such date.

### **7) SPARE PARTS**

- (a) The contractor will use all reasonable endeavours to supply all spare parts but the contractor shall not be liable or in default for any delay in performing, or failure to perform, the scheduled maintenance services due to any delay or failure or delay is due to force majeure pursuant to Clause 14 (2) herein provided always that should any spare part be required to replace a part damaged otherwise than by fair wear and tear as to which the contractors decision shall be final and binding on the customer. The contractor reserves the right to charge the customer in respect of any such spare part.
- (b) For the purposes of this agreement the term "spare part" shall not extend to operating media such as paper, tape, ribbons, disk packs, inking materials, magnetic tape, disk cartridges, floppy diskettes and all other expendable items for which the customer alone shall be responsible and for which he shall bear the full cost of replacement.
- (c) When replaced spare parts are fitted by the contractor the replacement spare parts shall become the customer's property and the parts removed shall become the contractor's property unless otherwise agreed in writing between the parties.

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### **8) NON-MAINTAINABLE EQUIPMENT**

If in the reasonable opinion of the contractor any part of the equipment cannot be maintained satisfactorily by the provisions of replacement spare parts or if a printed circuit board major sub-assembly of the whole of the equipment is damaged beyond economic repair then the contractor reserves the right to cancel this agreement forthwith. Upon giving written notice to the customer, in so far as it relates to that part of the equipment and any other parts which are rendered inoperable or incapable of being maintained as a result.

### **9) CARE OF THE EQUIPMENT**

- (a) The customer shall exercise due care in respect of the equipment and in particular shall house the equipment in suitable premises and under suitable conditions shall not move the equipment to another location without notifying the contractor, shall use only such operating media as are approved by the equipment manufacture (s) and shall follow all such instructions and recommendations relating to the care and operation of the equipment as may be issued by the equipment manufacture (s) or as may alternatively be advised in writing by the contractor from time to time.
- (b) The customer shall carry out operators routine servicing of the equipment in accordance with all such instructions and recommendations as may be issued by the equipment manufacturer (s) or as may alternatively be advised in writing by the contractor from time to time, but except insofar as Clause 9 hereof applies shall not otherwise adjust, maintain, repair, replace or remove any of the equipment or any part thereof or permit any other person to do so.
- (c) The equipment shall during the continuance of this agreement where so ever it may be situated remain at the risk of the customer.

### **10) NON-MAINTENANCE AT WORK**

- (a) The customer shall at all times notify the contractor of all non-maintenance work carried out on the equipment by a third party and any additional maintenance which in the reasonable opinion of the contractor results from the negligent performance of such work will be chargeable by the contractor in accordance with the contractors standard charges for such work as is from time to time established.
- (b) Any non-maintenance work carried out by the contractor at the request of the customer shall attract additional charges based on the contractors standard charges for such work as is from time to time established.
- (c) For the purposes of this agreement non-maintenance work shall include but not be limited to movement, modification, additions, deletions or attachments of the equipment.

### **11) DEFAULT OF CUSTOMER**

Any obligation or liability of the contractor under this agreement shall be suspended and unenforceable by the customer whilst the customer is in default of the terms of payment or any other of the customers obligation under this agreement.

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### **12) LIABILITY**

The contractor shall be under no liability to the customers or to any other person or body (corporate or unincorporated) for any loss, damage, injury, or death to any property, media or person (hereinafter collectively referred to as "losses") caused by the equipment or their use of the performance by the contractor of its obligations under the agreement save that: -

- (a) The contractor will be responsible for any personal injury or death to any person caused by the contractors negligence
- (b) The contract will be responsible for any other losses where these are caused wholly and directly by the negligence or wilful misconduct of the contractor provided that:-
  - (i) the aggregate liability of the contractor in respect of such losses shall not exceed £1,000,000 and
  - (ii) The contractor shall not be liable for any indirect or consequential losses (whether pecuniary or otherwise) to the extent to which the exclusion of liability is reasonable within the terms of the unfair contract terms Act 1977.

### **13) PERIOD OF CONTRACT**

This agreement shall continue (subject to provisions for earlier termination contained in these Terms and Conditions) until terminated by either party giving to the other not less than three months' written notice in that regard, such notice to expire on the first or any subsequent anniversary of the date on which this Agreement was signed.

### **14) TERMINATION**

- (a) Notwithstanding anything else contained herein, this agreement may be terminated
  - (i) by the contractor forthwith by notice in writing to the customer if the customer, being an incorporated company, shall have a receiver or liquidator appointed or shall pass a resolution for winding-up or a court shall make an order to that effect or being a partnership shall be dissolved or being an individual shall commit any act of bankruptcy or shall die or the customer (whether an incorporated company or not) shall enter into any composition or arrangement with the customers creditors or
  - (j) by either party forthwith by notice in writing to the other if either party is in breach of any of its obligations under this agreement which is not remedied within thirty days after written notice thereof has been given to such party by the other
- (b) Any termination under sub-clause 13 (1) above shall be without prejudice to any prior rights of either party under by the agreement.

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### **15) FORCE MAJEURE**

- (a) The contractor shall not be held liable or deemed to be in default under this agreement for any failure to perform its obligations hereunder if such failure directly or indirectly from force majeure.
- (b) For the purposes of this agreement, force majeure shall include (but without prejudice to the generality of the foregoing) any law, order, regulation, direction or request of the Government of the United Kingdom or of any other Government, of any Department, Agency or Corporation of any one or more such Governments, or of any supranational legal authority; failure or delay of transportation; inability to obtain, or delay in obtaining, necessary labour, manufacturing facilities, materials or spare parts from usual sources, strikes or other labour difficulties, insurrection, riots, national emergencies, war, acts of public enemies, fire, floods or other catastrophes; acts of God or any causes of like or different kind beyond the control of the contractor

### **16) NOTICE**

- (a) Any notice or consent required or permitted hereunder shall be in writing and shall be deemed to be duly given if deposited by hand at or despatched by registered prepaid postage or by facsimile addresses to the registered office of the party to whom it is addressed as set out in the preamble to this agreement or such other address as the said party may have specified by notice given in writing to the other party.
- (b) Unless it is expressly agreed or otherwise, any such notice or consent shall be deemed to be served seven days from the date of deposit or despatch, whichever the case may be.

### **17) ENTIRE AGREEMENT**

- (a) This agreement together with the schedules hereto constitutes the entire Agreement and understanding between the parties and supersedes all previous agreements, understandings and/or representation between the parties
- (b) Any terms and conditions (including dates) on any purchase order or other document whatsoever issued by the customer in connection with this agreement shall not be binding on the contractor and shall not have significance in interpreting this agreement, and the fact that the contractor may quote the customers purchase order number on all invoices for the convenience of the customers accounting system shall not be taken as evidence to the contrary.

### **18) AMENDMENT**

Except where it is otherwise provided herein, any amendment to this agreement and/or to the schedule hereto shall be made by the authority in writing of both parties.

### **19) WAIVER OR REMEDIES**

No forbearance delay or indulgence by the contractor in enforcing the provisions of this agreement shall prejudice or restrict the rights of the contractor nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for the contractor is exclusive of any other right, power or remedy available to the contractor and each such right, power or remedy shall be cumulative.

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### **20) OFF SET**

Whenever under this agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum being due or which at any time thereafter may become due to the Contractor under this or any other agreement with the customer.

### **21) ASSIGNMENT**

The customer shall not assign or transfer this agreement whether in whole or in part without the prior consent of the contractor.

### **22) HEADINGS**

The headings to the clauses of this agreement are for ease for reference only and shall not affect the interpretation or construction hereof.

### **23) LAW OF CONTRACT**

This agreement shall in all respects be governed by and constructed in accordance with the laws of England.