

DRS DATA SERVICES LIMITED

HARDWARE MAINTENANCE AGREEMENT  
Terms and Conditions

**PARTIES:**

- (1) **DRS DATA SERVICES LIMITED** whose registered office is at 1 Danbury Court, Linford Wood, Milton Keynes, MK14 6LR (the "Company").
- (2) The person, firm or company named in the Schedule (the "Customer").

**RECITAL:** The Company has agreed to maintain the Customer's Equipment in accordance with these terms and conditions.

**DEFINITIONS:** In these terms and conditions, the following expressions have the following meanings:

- the **'Agreement'** means this hardware maintenance agreement;
- the **'Equipment'** means the hardware specified in the Schedule;
- the **'Location'** means the place where the Equipment is located;
- the **'Maintenance Charge'** means the charge due from the Customer to the Company for the Maintenance Services specified in the Schedule;
- the **'Maintenance Hours'** means between the hours of 9.00am and 5.00pm on weekdays excluding bank holidays;
- the **'Maintenance Services'** means the maintenance provided to the Customer for the Equipment by the Company;
- the **'Response Time'** means the time taken for the Company to verbally respond to a logged call; and
- the **'Schedule'** means the schedule attached to and forming part of this Agreement.

**1 HARDWARE MAINTENANCE:**

**1.1 Support:**

- 1.1.1 The Company shall visit the Location to test the functions of the Equipment and to make any necessary adjustments to keep the Equipment in good working order. Visits shall be made during the Maintenance Hours by prior appointment with the Customer.
- 1.1.2 Upon notification from the Customer that the Equipment has failed (or is malfunctioning), the Company shall make any necessary repairs and adjustments to the Equipment to restore the Equipment to its proper operating condition.

**1.2 Response Times:**

- 1.2.1 On receipt of a logged call, the Company will verbally respond. Though the response times shall be an estimate only, the Company will use its reasonable endeavours to respond to the Customer's logged calls within those response times.
- 1.2.2 If, in the Company's reasonable opinion, corrective maintenance is necessary, it will use its reasonable endeavours to dispatch an engineer to the Location within the Response Time.

**2 RETURN OF EQUIPMENT**

**2.1 Corrective Maintenance:**

In the event of failure or malfunction of the Equipment, the Customer may, after informing the Company, return the Equipment to the Company. The Customer shall ensure that the Equipment is packed in a manner approved by the Company. On receipt of the Equipment, the Company shall make such repairs and adjustments to restore the Equipment to its proper operating condition.

**2.2 Repair Time**

On receipt of the Equipment for corrective maintenance, the Company undertakes to use reasonable endeavours to make any repairs and adjustments and replace those parts of the Equipment necessary to restore the Equipment to its proper operating condition. The Company shall promptly notify the Customer if the Equipment returned is found to be beyond economic repair.

**2.3 Carriage Charges:**

All carriage costs arising from the return of Equipment shall be the

responsibility of, and at the expense of, the Company.

**3 HARDWARE MAINTENANCE CHARGES**

- 3.1 In consideration of the Maintenance Services, the Customer shall pay the Maintenance Charge in advance as specified in the Schedule. Payment shall not be considered made until it is received by the Company as cleared funds.
- 3.2 The Maintenance Charge will be reviewed, and may be increased, no more than once in each year of this Agreement (which increase shall not exceed the increase in the retail price index for the calendar year ended on such anniversary). Each increase shall be implemented on the anniversary of the commencement date (as specified in the Schedule) of this Agreement.
- 3.3 The Maintenance Charge is exclusive of value added tax which must be paid by the Customer (if applicable) at the appropriate rate.
- 3.4 The Company reserves the right to charge interest on any overdue sum still unpaid 30 days after the date of the Company's invoice, at 5% above the base lending rate from time to time of Barclays Bank plc.

**4 MAINTENANCE SERVICES:**

- 4.1 The Maintenance Services do not include any maintenance of the Equipment which has occurred as a result of anything other than fair wear and tear, including (but not limited to):
  - 4.1.1 failure or fluctuations of electric power, air conditioning, humidity control or other environmental conditions;
  - 4.1.2 the misuse or neglect of the Customer or any third party; or
  - 4.1.3 the result of an act of God, fire, flood, war, violence or other similar occurrence, or any cause beyond the Company's reasonable control.
- 4.2 The Company shall not provide the Maintenance Services at any place other than the Location except as previously approved by the Company in writing.
- 4.3 The Company shall not be responsible for the maintenance of any attachment, consumables or associated equipment (whether or not supplied by the Company) which does not form part of the Equipment and the cost of replacing worn out consumables shall be met in full by the Customer.
- 4.4 The cost of any inspection required of the Equipment specified in the Schedule prior to the renewal of this Agreement will be charged at the standard rate.
- 4.5 During the term of this Agreement, its provisions will apply to all replacement parts of the Equipment provided by the Company. Any replacement parts will become the property of the Customer whilst parts removed become the absolute property of the Company.
- 4.6 The Company reserves the right to make an additional charge payable by the Customer at its current standard scale of charges for services visits made by the Customer to inspect the Equipment due to causes not covered by the Maintenance Services or at the request of the Customer which the Company finds to be frivolous or unnecessary.

**5 CUSTOMER'S OBLIGATIONS:**

- 5.1 The Customer shall:
  - 5.1.1 provide the Company with full and safe access to the Equipment and such telecommunication facilities as are reasonably required by the Company for testing and diagnostic purposes at the Customer's expense;
  - 5.1.2 ensure in the interests of health and safety that the Company's representatives, while on the Customer's premises for the purposes of this Agreement, are fully advised of all relevant safety procedures in force at the Location; and
  - 5.1.3 promptly notify the Company if the Equipment is not operating correctly. The Company is released from all obligations to investigate or correct any failure or incorrect working if more than 30 days have elapsed since the failure occurred.

- 5.2 The Customer warrants that it has not relied on any oral representation made by the Company or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Company which is intended only to convey a general idea of the products and services it is able to provide.
- 5.3 The Customer shall keep full, secure copies of the Customer's data and computer records in accordance with its legal obligations and with best computing practice.

## 6 THE COMPANY'S WARRANTY AND LIMITS OF LIABILITY

- 6.1 **The company represents and warrants that the Maintenance Services will be performed in accordance with applicable laws and regulations and with reasonable skill and care.**
- 6.2 **No representation or warranty is given by the Company that all faults will be fixed or will be fixed within a specified time period.**
- 6.3 **All other warranties, conditions and other terms which might have effect between the parties or be implied or incorporated into this Agreement by statute, common law or otherwise are hereby excluded.**
- 6.4 **The total liability of the Company whether in contract, tort or otherwise in connection with this Agreement shall in no circumstances exceed a sum equal to the Maintenance Charge paid by the Customer pursuant to this Agreement in the year in which the liability arises.**
- 6.5 **The exclusions and limitations in this Agreement shall apply to the fullest extent permissible at law but the Company shall not exclude liability for:**
- 6.5.1 **death or personal injury caused by the negligence of its officers, employees, contractors or agents; or**
  - 6.5.2 **fraud or fraudulent misrepresentation; or**
  - 6.5.3 **any other liability which cannot be lawfully excluded.**

## 7 DURATION AND TERMINATION

- 7.1 This Agreement shall begin on the commencement date set out in the Schedule and, subject to the payment by the Customer of the Maintenance Charge when due, shall continue thereafter, unless terminated by either party on serving 30 days' written notice on the other to expire on any anniversary of the commencement date. In addition, this Agreement may be terminated:
- 7.1.1 immediately by either party giving notice in writing to the other if the other commits any material breach of any term of the Agreement, and (in the case of breach capable of being remedied) shall have failed within 30 days after the receipt of the request in writing from the other party so to do, to remedy the breach; or
  - 7.1.2 by either party giving notice in writing to the other if the other party being a company shall have a receiver or liquidator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of amalgamation or reconstruction) 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 if the other party (whether a company or not) shall enter into any composition or agreement with its creditors or shall become unable to pay its debts, or any event occurs, or proceeding is taken, that has an effect equivalent or similar to any of the events mentioned above.
- 7.2 Any termination of this Agreement howsoever caused 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.
- 7.3 On termination of this Agreement for any reason, the Customer shall immediately pay any and all outstanding invoices and interest due to the Company.

## 8 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements between the parties and constitutes the entire agreement between the parties in relation to its subject matter. No addition or modification to the Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of each of the parties.

## 9 ASSIGNMENT

The Customer shall not assign or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the Company.

## 10 SUB-CONTRACTS

The Company may sub-contract any of its obligations under this Agreement on notice to the Customer and shall not be relieved from any of its obligations hereunder by entering into such sub-contract.

## 11 NOTICES

All notices which are required to be given shall be in writing and shall be delivered in person or sent by registered post or air mail as appropriate properly posted and fully prepaid or sent by facsimile transmission to the respective party to the address for each party set out in the Agreement. Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered or sent by facsimile or in any other event within 14 days after it was posted in the manner hereinbefore provided.

## 12 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed and construed in accordance with the laws of England and the parties each submit to the exclusive jurisdiction of the English courts.

## 13 HEADINGS

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

## 14 MISCELLANEOUS

- 14.1 The Customer 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 Company.
- 14.2 The Customer shall not directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Company any person employed by the Company in the provision of the Maintenance Services at any time during the term of the Agreement or for a further period of 12 months thereafter.
- 14.3 No person other than a party to this agreement shall have any rights to enforce any term of this agreement.
- 14.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement but all the counterparts shall together constitute the same agreement.