

# **Maintenance Agreement**

**for**

**A COMPANY**

**Hardware Support Agreement**  
**Contract Number : 11111**  
**This Agreement is made on the 17/3/2003**

**PARTIES:**

- (1) Ambient Computer Services Limited who's registered office is at  
Rutland House, 90/92 Baxter Avenue, Southend On Sea SS2 6HZ ("Ambient")
- (2) THE COMPANY ("the customer")

Ambient has agreed to maintain the Customers Hardware computer equipment hereinafter described upon the terms and conditions hereinafter contained.

**TERMS OF THE AGREEMENT:**

Ambient's General Terms and Conditions of Trading also apply to this agreement, copy of which will be supplied with this document and also is available upon request, free of charge.

NOW IT IS HEREBY AGREED as follows:

**1. Definitions**

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Equipment" means the computer hardware equipment specified in the schedule including any additions thereto notified by the customer on or before the Commencement Date. It includes any changes and additions thereto as defined in "Additional Equipment" and "Non-Contracted Equipment" hereafter. It excludes all peripherals or computer add-ons unless separately listed in the schedule.

"Additional Equipment" means any changes and additions to Equipment made at the request of the customer after the Commencement Date and which are in good repair and condition.

"Non-Contracted Equipment" means any equipment at the Location, which is not included in the Equipment and in respect of which the Customer requests any Maintenance Services.

"Location" means the Customer's premises in which the Equipment is installed as specified in the Schedule.

"Commencement Date" means the start date for the provision of Maintenance Service as stated in the schedule "Initial Period" means the initial period of this Agreement commencing on the Commencement Date as specified in the Schedule.

"Scheduled Maintenance Services" means the maintenance services to be provided by Ambient pursuant to Clause 2 with effect from the Commencement Date.

"Emergency Maintenance Services" means the emergency maintenance services to be provided by Ambient pursuant to Clause 4 with effect from the Commencement Date.

“Maintenance Services” means the Scheduled Maintenance Services and the Emergency Maintenance Services.

“Maintenance Charge” means the periodic charge for the Scheduled Maintenance Services specified in the Schedule as varied from time to time pursuant to Clause 3 or as shall from time to time be agreed in writing between the parties.

“Additional Service” means the maintenance service (s) including supply of parts and consumables not included within the Maintenance Charge.

“Maintenance Hours” means the hours between 9.30 a.m. and 5.30 p.m. each day, excluding Saturdays, Sundays and Public Holidays.

## **2. Scheduled Maintenance Services**

As from the Commencement Date Ambient shall provide the following maintenance services in respect of the Equipment:

### **2.1 Corrective Maintenance**

Upon receipt of notification from the Customer that the Equipment has failed or is malfunctioning, Ambient shall during Maintenance Hours make such repairs and adjustments to and replace such parts of the Equipment as may be necessary to restore the Equipment to its proper operating condition subject to the terms stated herein.

### **2.2 Response Time**

On receipt of a request for corrective maintenance, Ambient will respond to the Customer during the Maintenance Hours on the response basis specified in the applicable Schedule.

## **3. Charges**

**3.1** In consideration of the Scheduled Maintenance Services the Customers shall pay the Maintenance Charge periodically in advance as specified in the Schedule. The Maintenance Charge shall be paid without prior demand and no payment shall be considered made until Ambient receives it. All payments shall be made in the manner specified in the Schedule.

**3.2** Charges shall be paid (unless otherwise provided elsewhere in this Agreement) within 14 days of the date of Ambient’s invoice therefore provided nevertheless that the first payment for Maintenance Charge shall be made on or before the Commencement Date. Failure to make payment by the due date entitles Ambient to stop work and/or withhold the provision of Maintenance Services until such time as due payment is respect of such time.

**3.3** Charges for Additional Equipment will be made for the balance of the duration of the Agreement at Ambient’s prevailing rates for the period commencing 5 working days after Ambient has received the Customer’s notice of such addition and such being the date when Maintenance Cover commences for the Additional Equipment. Ambient is entitled to charge in addition for any services required to put such additional equipment into good repair and condition at Ambient’s prevailing rates prior to accepting such additional as Equipment.

**3.4** Charges for Non-Contracted Equipment will be made at Ambient’s prevailing rates for such services as are required in the first instance to put such Non-Contracted Equipment in good repair and condition and in the second instance the prevailing rates for the balance of the term as set out in 3.3 hereof whereupon such Non Contracted Equipment will become Additional Equipment.

- 3.5** Ambient shall be entitled at any time and from time to time (subject as mentioned below) to vary the Maintenance Charge by giving the Customer not less than 30 days prior written notice
- 3.6** All invoices shall be deemed to be correct and approved by the customer unless either manifest clerical errors have been made or the Customer sends a notice making a bona fide complaint on any aspect of an invoice within 2 weeks of the invoice date specifying in what way the invoice is inconsistent with the provisions of this Agreement. In any event all amounts payable hereunder will be payable without set-off or counterclaim by the due date.
- 3.7** All amounts payable under this Agreement are exclusive of Value Added Tax and any other taxes payable and which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 3.8** Any sum payable under this Agreement which is not paid within 14 days after the due date will (without prejudice to Ambient's other rights and remedies) incur an interest charge on such sums on a day to day basis (as well as before any judgement) from the due date to the date of actual payment (both dates inclusive) at the rate as specified in the General Trading Conditions. The Customer on demand shall pay such interest.

#### **4. Emergency Maintenance Services**

In addition to the Scheduled Maintenance Services, Ambient shall provide during the continuance of this Agreement an emergency corrective maintenance service outside Maintenance hours as soon as practicable after the receipt of a request by the Customer therefore (such request to be made during Maintenance Hours) such emergency services shall be charged for at Ambient's standard scale of charges for such service from time to time in force and shall be additional to the Maintenance Charge. Such charges shall run from the first arrival of Ambient's service engineer at the Location to his final departure therefrom.

#### **5. Limitations**

- 5.1** The Maintenance Services include maintenance of the Equipment which is necessitated as a result of fair wear and tear only. Any maintenance which is required as a result of the following by way of example, is excluded:
- (a) failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or
  - (b) damage or accident (such as but not limited to coffee spilled on a keyboard), transportation, neglect, misuse, or default of the Customer, its employees or agents or any third party; or
  - (c) any fault in any attachments or associated equipment (whether or not supplied by Ambient) which do not form part of the Equipment; or
  - (d) act of God, fire, flood, war, act of violence, or any other similar occurrence; or
  - (e) any attempt by any person other than Ambient's personnel to adjust, repair or maintain the Equipment; or
  - (f) failure of storage media, or
  - (g) Excessive use of any part of the Equipment such being in excess of the manufacturer's specification, or
  - (h) Any use with the Equipment of printing paper or cleaning material which are not of the type recommended by the manufacturer of the Equipment or Ambient, or

- (i) Service at other than the location (or such other location as Ambient shall have approved in writing); or
- (j) Use of the equipment, not in accordance with the operating manual.
- (k) Any defect or error in any software used upon or in association with equipment.
- (l) Repair and/or replacement of consumables as listed herein:
  - Drum cartridge
  - Ribbons
  - Toner cartridge
  - Paper
  - Collector units/bottles
  - Paper separator belt
  - Maintenance kits
  - Ozone filters
  - Developer kits
  - Printhead
  - Fuser units
  - Print wheels
  - Ink bottles/ink
  - Print shields
  - Ink cartridges
  - Print bands
  - Re-chargeable batteries
  - Terminal/ PC accessories such as: screen filters, mouse mats, holsters, monitor arms
  - Bulbs/lamps
  - Power Leads
  - Door Hinges
- (m) Maintenance or support of the operating system of any computer unless charged for and specified in the Schedule; or
- (n) Electrical or other environmental work external to the Equipment; or
- (o) maintenance of any attachments or associated equipment (whether or not supplied by Ambient) which do not form part of the Equipment; or
- (p) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment, or
- (q) maintenance or repair of any Equipment which in Ambient's opinion is obsolete as a result of parts ceasing to be manufactured, or
- (r) any requirement to carry out an annual or other test on the Equipment to satisfy statutory regulations or any repair necessitated as a result of a failure to satisfy such test, or
- (s) Any request to provide a Preventative Maintenance service unless charged for and specified in the Schedule.
- (t) Failure, inability or refusal to afford Ambient's personnel proper accesses to the equipment.

**5.2** Ambient will (if it is able to do so) at the request and expense of the Customer repair or replace any part of the Equipment which has failed due to any cause as set out in Clause 5.1 above or as a result of the Customer's breach of any of its obligations set out in Clause 9 hereof at Ambient's then prevailing rates. In these circumstances Customer will on request provide a Purchase Order number to enable Ambient to invoice the Customer. If the Customer does not provide such Purchase Order number such will not release the Customer from its obligation to pay these charges.

## **6. Replacement**

- 6.1** Ambient reserves the right to replace, by providing on loan or permanently the whole of or any part or parts of any equipment which may be found to be faulty, worn out or in need of investigation by parts or Equipment of similar or better specification.
- 6.2** Ambient reserves the right to send to customer replacement items such as keyboards, mice and monitors (less than 19 inches in diameter) for installation by the Customer.
- 6.3** The customer will retain any part or parts of the Equipment, which has been replaced by a loan, until such time as Ambient replaces the Customer's original equipment.
- 6.4** All defective parts or Equipment permanently removed by Ambient will become the property of Ambient and replacement (other than any Equipment on loan or rental) will become the property of the Customer.
- 6.5** The provisions of this Agreement shall apply to all replacements and renewals of any part of parts of the Equipment made by Ambient during the continuance of this Agreement.

## **7. Service Visits outside the Maintenance Services**

Ambient shall make an additional charge in accordance with its standard scale of charges from time to time in force for the service visits:

- (a) made at the request of the Customer by reason of any fault in the Equipment due to causes not covered by the Maintenance Services; or
- (b) made at the request of the Customer but which Ambient determines is not covered by any failure of the Equipment
- (c) Abortive visits
- (d) Maintenance Services shall be deemed to be Excluded Services where the 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.

## **8. Duration**

- 8.1** This Agreement shall have effect on the date hereof and shall continue for the Initial Period of 1 year and shall remain in force thereafter unless or until terminated by either party giving to the other not less than 90 days written notice of termination expiring on the last day of the Initial Period or on any anniversary date thereafter but shall be subject to earlier termination as provided elsewhere in this Agreement.
- 8.2** In the event of the Customer terminating this agreement without the correct notice as specified above, the Customer will pay to the Company a sum equal to 90 days charge after setting the Initial Period charge.

## 9. Customer's Obligations

During the continuance of this Agreement the Customer shall:

- (a) Ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment the cables and fittings associated therewith and the electricity supply thereto.
- (b) Not add to or make any modification to the Equipment without Ambient's prior written consent provided nevertheless if the Customer does make any such modification or addition which may affect the performance, compatibility or reliability of any Equipment the Customer will pay Ambient such additional charges as are appropriate to remedy any defect in or caused by the modification or addition and to pay for a further charge in respect of such Additional Equipment or change in specification.
- (c) Keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment.
- (d) Ensure that the external surfaces of the Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time.
- (e) Save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit or authorise anyone other than Ambient to carry out any adjustments, repairs or maintenance of the Equipment.
- (f) Use on the Equipment only such operating supplies as recommended by the manufacturer.
- (g) Not cause the need for services as a result of making any movement of the Equipment or removing the Equipment from the Location.
- (h) Not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved by the manufacturer.
- (i) Provide Ambient with full and safe access to the Equipment for the purposes of the Agreement.
- (j) Provide adequate working space around the Equipment for the use of Ambient's personnel and shall make available such reasonable facilities as may be requested from time to time by Ambient for the storage and safekeeping of test equipment and spare parts.
- (k) Ensure in the interests of health and safety that Ambient's personnel while on the Customer's premises for the purposes of this Agreement are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures.
- (l) Notify Ambient within 2 working days of the completion of any **additional** service on any Equipment if there are any defects in the maintenance carried out. Failure by the Customer so to notify Ambient within the 2 working days shall free Ambient from all obligations to investigate or correct such failure or incorrect working.
- (m) Subject to Clause 13, make available to Ambient such programs, operating manuals and information as may be necessary to enable Ambient to perform its obligations hereunder and shall if requested by Ambient provide staff familiar with the Customer's programs and operations, which shall co-operate fully with Ambient's personnel in the diagnosis of any malfunction of the Equipment.
- (n) Make available to Ambient free of charge all facilities and services reasonably required by Ambient to enable Ambient to perform the Maintenance Service including without limitation computer runs, memory dumps, print-outs [data preparation] and photocopying.

- (o) In the event that Ambient is requested to supply any Maintenance Services in respect of any Additional Equipment, advise Ambient forthwith of the date of the installation of such item of Additional Equipment at the Location subject to the provisions of Clause 3.1 hereof.
- (p) Provide such telecommunication facilities as are reasonably required by Ambient for testing and diagnostic purposes at the Customer's expense.
- (q) Keep full security copies and/or back-up tapes of the Customer's programs, databases and computer records in accordance with best computing practice.

## **10. Spare Parts**

- 10.1** Ambient shall not be liable for any delay in performing its obligations hereunder if any recommended spare parts are not available (otherwise than due to the fault of Ambient) and shall be entitled to charge the Customer for all additional expenses and costs incurred by Ambient as a result of such delay and which delay will not be incorporated within the performance measurement of any Service Level Agreement.
- 10.2** Ambient shall supply any spare parts, which are not included in the Maintenance Charge, at its list prices from time to time in force.
- 10.3** All defective parts permanently removed by Ambient will become the property of Ambient and the replacement will become the property of the Customer (except for any equipment provided on rental or loan)
- 10.4** Where Ambient provide on-site stock or other equipment to be held at Customer's premises, whether requested by the customer or not, to discharge its contractual obligations, at any time during the contractual period, the customers agree to provide a clean and secure location for storage to be solely accessed by Ambient staff. However, where the customer is unable to provide a secure location or where there is no full time Ambient engineer based at the Customers site, the customer takes full responsibility for the accountability of the stock and will be invoiced for any unaccounted equipment / stock including all packaging.

## **11. Electromagnetic Compatibility**

- 11.1** In this clause the expression "Electromagnetic Equipment" means any part or parts of the Equipment which are electric or electronic and covered by the Electromagnetic Compatibility Regulations 1992
- 11.2** The Customer warrants to Ambient that at the date hereof all the Electromagnetic Equipment complies fully with the Electromagnetic Compatibility Regulations 1992
- 11.3** The Customer undertakes to Ambient that it will not make any modification to the Electromagnetic Equipment without the prior written consent of Ambient.

## **12. Termination**

**12.1** Notwithstanding anything else contained herein, this Agreement may be terminated:

- (a) By Ambient forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under the terms of this Agreement and such sum remains unpaid for 14 days after written notice from Ambient that such sum has not been paid (such notice to contain a warning of Ambient's intention to terminate); or
- (b) By either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement (other than any failure by the Customer to make any payment hereunder in which event the provisions of Paragraph (a) above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate) provided that the Customer shall only be entitled to serve notice under this paragraph if it is not itself in breach of any of its warranties, undertakings and obligations hereunder; or
- (c) By either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

**12.2** In the event that the Customer terminates the Agreement without giving notice pursuant to Clause 8 hereof, the Customer will pay Ambient a sum equal to the sum that would have become payable under the Agreement for the balance of the period of the Agreement had the Customer complied with that clause.

**12.3** Ambient may terminate the provision of Maintenance Services on any Equipment which in Ambient's opinion is obsolete or incapable of economical repair.

**12.4** Any termination of this Agreement howsoever occasioned 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.

## **13. Confidentiality**

**13.1** Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is trivial or obvious. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

**13.2** **The Customer undertakes to Ambient not during nor within a period of one year following termination of the Agreement directly or indirectly whether by way of any holding company, subsidiary, affiliate or otherwise to solicit or offer in any way endeavour to entice away from Ambient any person employed at any time during the period of the Agreement whether such person or persons is or are involved in the performance of any of the obligations or rights under the Agreement or not.**

**13.3 If the Customer is in breach of Clause 13.2 hereof, then without prejudice to Ambient's other rights or remedies, the Customer agrees to pay Ambient within 7 days of demand by way of agreed liquidated damages the sum of £60,000 in respect of each employee so employed by the Customer which for the purpose of this Clause includes any holding company, subsidiary or affiliate of the Customer.**

#### **14. Force Majeure**

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

#### **15. Customer's Warranty**

**15.1** The Customer hereby warrants to Ambient that the Customer has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement. The Customer further warrants that if at the Commencement Date any Equipment is not in good repair and condition then the Customer will pay for such services as are required to put such of the Equipment into good repair and condition at the rates set out in Clause 3.2 hereof.

**15.2** The Customer warrants and undertakes to the Ambient that it or the end user is the owner of the equipment (or where the equipment is leased or hire purchased, that the user has consented to this Agreement) and that the Customer has full power and authority to enter into this agreement and that the End User permits and consents to Ambient performing the Maintenance Services and any Additional Services.

**15.3** The Customer undertakes to indemnify and hold harmless Ambient against any loss or damage that Ambient may suffer as a result of a breach by the Customer or End User of clause 15.2 or 9.

#### **16. Liability**

**16.1** Ambient shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Equipment or loss of or spoiling of the Customer's programs or data) resulting from any breakdown of or fault in the Equipment unless such breakdown or fault is caused by the negligence or wilful misconduct of Ambient, its employees, agents or sub-contractors or and then only to the extent not excluded by this Agreement.

**16.2** Ambient carry public and product liability to a limited of £1,000,000 on any one incident to indemnify the Customer in respect of any loss or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of Ambient, its employees, agents or sub-contractors.

**16.3** The Customer shall indemnify Ambient and keep Ambient fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors.

**16.4** The respective liability of Ambient and the Customer under clause 16.2 and 16.3 in respect of each event or series of connected events shall not exceed £1,000,000.

**16.5** Notwithstanding anything else contained in this Agreement, Ambient shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

**16.6** Ambient shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

**17. Waiver of Remedies**

No forbearance, delay or indulgence by either party in enforcing the provision of this Agreement shall prejudice or restrict the rights of that party 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 either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

**18. Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter thereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

**19. Assignment**

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

**20. Sub-Contracts**

Ambient may enter into any sub-contract with any person for the performance of any part of this Agreement. Ambient shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of this Agreement.

**21. Notices**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

**22. Interpretation**

In this Agreement:

- (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- (b) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;

- (c) any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;

**23. Law**

This Agreement shall be governed by and construed in accordance with the laws of England.

**24. Disputes**

Any dispute which may arise between the parties concerning this Agreement shall be referred to the arbitration of a single Arbitrator who shall be appointed at the request of either party by the President for the time being of the British Computer Society whose decision will be binding on the parties. The arbitration shall be in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

**25. Severability**

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

**SIGNED** for and on behalf of  
**AMBIENT COMPUTER SERVICES LTD**

**SIGNED** for and on behalf of  
**(Company Name)**

By \_\_\_\_\_

By \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_