



TERMS AND CONDITIONS OF MAINTENANCE

1. In these Terms and Conditions the following terms shall have the following meanings:

'Additional Charges' means the charges to be calculated by the Company on a time and materials basis at its then prevailing rates in respect of the provision of Excepted Services pursuant to clause 6.2 below.

'Commencement Date' means the date set out in the Maintenance Schedule upon which these Terms and Conditions shall commence or shall be deemed to have commenced.

'Company' means Rapid Computers Limited, t/a Rapid Technologies, whose address is 10 Dakota Business Park, Skyhawk Avenue, off Banks Road, Speke, Liverpool, L19 2QR.

'Customer' means the person or legal body whose details are set out in the Maintenance Schedule.

'Equipment' means the item(s) of computer hardware, cabling and other associated equipment identified by type and serial number in the Maintenance Schedule.

'Excepted Services' means those services referred to in clause 6 below which do not fall within the definition of Maintenance Services.

'Initial Period' means the period of twelve months commencing on the Commencement Date.

'Licensed Programs' means the software program(s) in object code form identified by title and reference number in the Maintenance Schedule.

'Licensed Program Materials' means the Licensed Programs and the Program Documentation.

'Maintenance Charge' means the annual charge for the Maintenance Services set out in the Maintenance Schedule.

'Maintenance Schedule' means the document entitled "Maintenance Schedule" attached to these Terms and Conditions.

'Maintenance Services' means the provision of maintenance as defined in clause 4 below.

'Rapid Technologies' Telephone Support' means the provision of the services set out in clause 4.1 below.

'Rapid Technologies' Remote Support' means the provision of the services set out in clause 4.2 below.

'Rapid Technologies' On-Site Support' means the provision of the services set out in clause 4.3 below.

'Place of Use' means that part of the Customer's premises at (each of) the Site(s) where the Equipment is installed and operated.

'Program Documentation' means instruction manuals, user guides and other information issued in respect of the Licensed Programs

'Quotation' means the quotation provided to the Customer by the Company for the provision of Maintenance Services.

'Site(s)' means the Customer's address(es) specified in the Maintenance Schedule.

2. In consideration of the payment by the Customer of the Maintenance Charge in accordance with the provisions of clause 3 below the Company agrees to take all reasonable steps to provide the Maintenance Services to the Customer in accordance with these Terms and Conditions.

3. The Maintenance Charge shall be as set out in the Maintenance Schedule.

3.1 The Company shall not vary the Maintenance Charge during the Initial Period unless it agrees to do so with the Customer. Thereafter, the Company shall be entitled to vary the Maintenance Charge at any time.

3.2 Unless the Company agrees otherwise in writing, the Maintenance Charge shall not include the travel, accommodation and subsistence expenses of the Company's employees (including the cost of time spent travelling) incurred in the provision of the Maintenance Services.

3.3 The Maintenance Charge shall not include the cost of any Excepted Services.

3.4 The Maintenance Charge shall be levied by the Company in the manner agreed with the Customer. Unless agreed otherwise in writing, the Maintenance Charge shall be payable by the Customer within 30 days of receipt of an invoice therefor.

3.5 The Company reserves the right to charge the Customer interest in respect of the late payment of the Maintenance Charge or Additional Charges due under these Terms and Conditions (as well after as before judgment) at the rate of ten per cent per annum above the base rate from time to time of AIB Bank from the due date therefor until payment.

4.1 If Rapid Technologies' Telephone Support is requested then the Maintenance Services shall comprise the provision of telephone support, details of which are set out in the Quotation, for those items of Equipment and Licensed Programs as are listed in the Maintenance Schedule.

4.2 If Rapid Technologies' Remote Support is requested then the Maintenance Services shall comprise the provision of remote technical support, details of which are set out in the Quotation, for those items of Equipment and Licensed Programs as are listed in the Maintenance Schedule.

4.3 If Rapid Technologies' On-Site Support is requested then the Maintenance Services shall comprise the provision of on-site technical support, details of which are set out in the Quotation, for those items of Equipment and Licensed Programs as are listed in the Maintenance Schedule.

5.1 The Maintenance Services will be provided upon written request by the Customer between the hours of 9.30 am and 4.45 pm Monday through Friday (excluding bank and other public holidays). The Company will use its reasonable endeavours to respond to a request for Maintenance Services within 8 working hours of receipt of the same.

6.1 The Maintenance Services shall not include the correction of any fault due to:

6.1.1 the Customer's failure to maintain a suitable environment for the Equipment at the Place of Use including, without limitation, failure to maintain a constant power supply, air conditioning or humidity control;

6.1.2 the Customer's neglect or misuse of the Equipment or its failure to operate the Equipment in accordance with the Program Documentation or for the purposes for which it was designed;

6.1.3 the alteration, modification, repair, adjustment or maintenance of the Equipment and/or the Licensed Programs by any party other than the Company without the Company's prior written consent;

- 6.1.4 the transportation or relocation of the Equipment and/or the Licensed Programs save where the same has been performed by or under the direction of the Company;
 - 6.1.5 the use of defective or inappropriate supplies with the Equipment;
 - 6.1.6 the use of the Licensed Programs on equipment other than the Equipment;
 - 6.1.7 any accident or disaster affecting the Equipment and/or the Licensed Programs including, without limitation, fire, flood, water, wind, lightning, transportation, vandalism or burglary;
 - 6.1.8 the Customer's failure, inability or refusal to afford the Company's personnel proper access to the relevant Site;
 - 6.1.9 the modification of the Licensed Programs or their merger (in whole or part) with any other software;
 - 6.1.10 the use of the Licensed Programs for a purpose for which they were not designed;
 - 6.1.11 the failure by the Customer to implement recommendations in respect of solutions to faults previously advised by the Company;
 - 6.1.12 the painting or refinishing of the Equipment;
 - 6.1.13 the relocation or transportation of the Licensed Programs and/or the Equipment;
 - 6.1.14 electrical work external to the Equipment; and / or
 - 6.1.15 any modification or alteration of or attachment to the Equipment or removal of the same.
- 6.2 The Company may, at its sole discretion, provide all or any of the Excepted Services referred to in clause 6.1 above. The Company shall be entitled to charge for the same by levying Additional Charges in the manner described in clause 6.4 below.
- 6.3 Without prejudice to clause 6.2 above, the Company shall be entitled to levy Additional Charges in the manner described in clause 6.4 below if 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.
- 6.4 Additional Charges shall be levied by the Company monthly in arrears and shall be payable by the Customer within 30 days of receipt of an invoice therefor.
- 7.** The Customer undertakes to the Company that it will:
- 7.1.1 grant the Company such access to the Place of Use as the Company shall from time to time reasonably require in order to discharge its obligations hereunder;
 - 7.1.2 make available at the Place of Use such facilities as the Company shall reasonably require in order to discharge its obligations hereunder including, without limitation, adequate work-space, storage and office furniture and equipment;
 - 7.1.3 make available the Equipment and the Licensed Programs and supply all documentation and other information necessary for the Company to diagnose any fault in the Equipment and/or the Licensed Programs; and
 - 7.1.4 take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors whilst at the relevant Site.
- 8.1** The Company warrants to the Customer that it will perform the Maintenance Services and any Excepted Services with reasonable care and skill.
- 8.2 The Company does not warrant that the Maintenance Services (or the Excepted Services) will cause the Equipment or Licensed Programs to operate without interruption or error.
- 8.3 Subject to the foregoing all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the performance by the

Company of the Maintenance Services or Excepted Services hereunder are hereby excluded to the extent permitted by law.

9.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

9.1.1 any breach of its contractual obligations arising under these Terms and Conditions; and

9.1.2 any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Terms and Conditions

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.

9.2 Any act or omission on the part of the Company or its employees, agents or sub-contractors falling within clause 9.1 above shall, for the purposes of this clause 9, be known as an 'Event of Default'.

9.3 The Company's liability to the Customer for:

9.3.1 death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence; and

9.3.2 all damage suffered by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982 shall not be limited.

9.4 Subject to the limits set out in clause 9.5.1 below, the Company shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company or its employees, agents or sub-contractors.

9.5 Subject to the provisions of clause 9.3 above, the Company's entire liability in respect of an Event of Default shall be limited to damages of an amount equal to:

9.5.1 £1000.00 in the case of an Event of Default falling within clause 9.4 above; and

9.5.2 the aggregate of the Maintenance Charge and the Additional Charges for the 12 months immediately preceding the date of the Event of Default in the case of an Event of Default falling outside clause 9.4 above.

9.6 Subject to clause 9.3 above, the Company shall not be liable to the Customer in respect of an Event of Default for loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

9.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under these Terms and Conditions.

9.8 The Customer hereby agrees to afford the Company not less than 90 days in which to remedy any Event of Default hereunder.

9.9 Except in the case of an Event of Default arising under clause 9.3 above the Company shall have no liability to the Customer in respect of an Event of Default unless the Customer shall have served notice of the same upon the Company within one month of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware, whichever is the sooner.

9.10 Nothing in this clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.

10.1 The Customer warrants and undertakes to the Company that:

10.1.1 it is the owner of the Equipment and the Licensed Programs;

10.1.2 it has full power and authority to enter into these Terms and Conditions and permit the Company to perform the Maintenance Services and any Excepted Services; and

10.1.3 the person who signs the Maintenance Schedule is duly authorised to do so.

10.2 The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of clause 10.1 above.

11.1 The Company reserves the right to supply new, second-hand or reconditioned replacement parts in the performance of its duties hereunder.

11.2 Any parts replaced by the Company pursuant to clause 11.1 above ('Replaced Parts') shall upon replacement become the property of the Company and the Customer warrants that it shall have a free and unencumbered title to such Replaced Parts or, where the Equipment is leased or charged, that it shall have obtained all necessary consents and authorities to part with possession and give good title to the Replaced Parts.

11.3 The Company reserves the right to remove an item (or items) of Equipment from the list of Equipment to be maintained (as set out in the Maintenance Schedule) at any time (with or without giving notice) in the event that it deems the item (or items) of Equipment uneconomical to repair. In such an event the Company will give the Customer a discount against the cost of any replacement item (or items) of Equipment purchased from the Company.

11.4 The Company shall be absolved of all of its obligations under these Terms and Conditions (or otherwise) in the event that it is unable to source/obtain replacement parts for the Equipment.

11.5 Computer printers which were purchased from their manufacturer (whether by the Customer or a third party) more than three years prior to the date of the request for Maintenance Services will only be maintained under these Terms and Conditions if the prior written consent of the Company has been obtained. This clause and clause 11.3 will apply notwithstanding the fact that a computer printer (or printers) is listed in the Maintenance Schedule as forming part of the Equipment.

11.6 The Customer undertakes to inform the Company if more than three years has elapsed (or elapses during the term of these Terms and Conditions) since a printer (or printers) was first purchased from its manufacturer (whether by the Customer or a third party). Upon being so informed, the Company shall, at its own discretion, decide whether or not to maintain the printer (or printers). If the Company decides not to maintain the printer (or printers) then it shall be removed from the list of Equipment in the Maintenance Schedule.

12. The Customer shall communicate to the Company the identity of the person(s) within its undertaking at (each of) the Site(s) who shall act as the sole contact point and channel of communication for the provision by the Company of the Maintenance Services during the currency of these Terms and Conditions. The Customer shall forthwith inform the Company of any change in the identity of any such person(s).

13. The provisions of these Terms and Conditions shall commence on the Commencement Date and shall continue until terminated by either party in accordance with the provisions of clause 14 below.

14.1 These Terms and Conditions may be terminated:

14.1.1 by the Company upon giving not less than one month's written notice to the Customer at any time after the Commencement Date;

14.1.2 by the Customer upon giving not less than three months' written notice to the Company at any time after the expiry of the Initial Period;

14.1.3 forthwith by the Company if the Customer fails to pay the Maintenance Charge or any Additional Charges due hereunder or any charges due to the Company whether under these Terms and Conditions or not within 30 days of the due date therefor;

14.1.4 forthwith by the Company if the Customer shall move any or all of the Equipment or any or all of the Licensed Programs from (any of) the Site(s) to a new location without the Company's prior written consent;

14.1.5 forthwith by the Company if the Customer commits a material breach of any term of these Terms and Conditions (other than one falling within 14.1.3 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within seven days of a written request by the Company to remedy the same;

14.1.6 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

14.2 Any termination of these Terms and Conditions pursuant to this clause 14 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or 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.

15.1 The Customer undertakes to keep confidential all information (written or oral) concerning the business and affairs of the Company that it shall have obtained or received as a result of the discussions leading up to or the entering into of these Terms and Conditions save that which is:

15.1.1 trivial or obvious;

15.1.2 required to be disclosed by virtue of a court order or statutory obligation;

15.1.3 already in its possession other than as a result of a breach of this clause; or

15.1.4 in the public domain other than as a result of a breach of this clause.

15.2 The Customer undertakes to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 15.1 above by its employees, agents and sub-contractors.

16.1 "Bribery Legislation" includes the Bribery Act 2010, Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916, or any similar anti-bribery or anti-corruption legislation, regulation, code and/or sanction of any jurisdiction applicable from time to time to the Customer, the Company, these Terms and Conditions and/or their subject matter.

16.2 The Customer represents, warrants and undertakes to the Company that:

16.2.1 in relation to these Terms and Conditions and/or their subject matter, neither the Customer nor any of its employees, agents or others performing services on its behalf in connection with these Terms and Conditions ("Associated Person") has

done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Customer and/or the Company of any Bribery Legislation;

16.2.2 it has in place, and will at all times during the term of these Terms and Conditions continue to have in place, adequate procedures designed to prevent any Associated Person from committing an offence under any Bribery Legislation; and, as a minimum, such procedures comply, and will at all times during the term of these Terms and Conditions comply, with the Bribery Act 2010;

16.2.3 it will, throughout the term of these Terms and Conditions, comply with, monitor and enforce the procedures referred to in Clause 16.2.2;

16.2.4 has conducted (and documented), and will conduct (and document), appropriate due diligence into the selection of any Associated Person who is involved with the subject matter of these Terms and Conditions;

16.2.5 it will procure that any Associated Person will:

(a) at all times during such Associated Person's appointment have in place adequate procedures designed to prevent anyone associated with the Associated Person from committing an offence under any Bribery Legislation and, as a minimum, such procedures will at all such times be no less stringent than the Company's own ethics code, policies and procedures; and

(b) throughout the term of any such Associated Person's appointment, comply with, monitor and enforce the procedures referred to above;

16.2.6 it will promptly report to the Company any suspicion which it (or any Associated Person) may have that there has been, or is likely in future to be, any breach of any Bribery Legislation in relation to these Terms and Conditions and/or their subject matter;

16.2.7 it will promptly co-operate (and will procure that each of its Associated Persons will promptly co-operate) with the Company and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Bribery Legislation by the Customer or any of its Associated Persons;

16.2.8 as at the Commencement Date, there is no outstanding investigation of the Customer or any Associated Person under any Bribery Legislation and in the last six years the Customer or any Associated Person has not been convicted of any offence under any Bribery Legislation or reached any settlement in relation to any alleged breach of any Bribery Legislation and has not self-reported any breach or suspected breach of any Bribery Legislation;

16.2.9 it will obtain a warranty equivalent to that contained in this clause 16 from each of its Associated Persons;

16.2.10 it will comply with the Company's Anti-Bribery Policy as may be amended from time to time;

16.2.11 it has in place and will maintain at all times such accounting procedures and internal controls as are necessary to record all expenditure in connection with these Terms and Conditions; and

16.2.12 it shall fully indemnify the Company against all costs, damages, fines, losses and expenses suffered or incurred by the Company as a result of a breach of this clause by the Customer or any of its Associated Persons.

16.3 The Customer accepts that a breach of this clause 16 will be deemed to be a material breach of these Terms and Conditions and will entitle the Company to terminate these Terms and Conditions without notice.

17. Neither party shall incur any liability to the other in the event that it is delayed in its performance of its obligations under these Terms and Conditions solely by force majeure where "force majeure" shall mean any cause of delay beyond the reasonable control of the party liable to perform unless conclusive evidence to the contrary is provided and shall include but not by way of limitation weather conditions, fires, strikes, lockouts, riots, sabotage, act of war or piracy, destruction of essential equipment by fire, explosion, storm, flood, earthquake or delay caused by failure of power supplied or transport facilities.

18. The Customer agrees not to employ or seek to employ any employee of the Company either during or for a period of six months after the termination of these Terms and Conditions. If any employee of the Company accepts employment with the Customer either during or for a period of six months after the termination of these Terms and Conditions then the Customer shall be liable to pay to the Company such fee as the Company considers appropriate. Such fee shall cover, inter alia, the costs and expenses incurred by the Company in recruiting a replacement employee.

19. The waiver by the Company of a breach or default of any of the provisions of these Terms and Conditions by the Customer shall not be construed as a waiver of any succeeding breach of the same or other provisions. Nor shall any delay or omission on the part of the Company to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.

20. If any provision of these Terms and Conditions shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these Terms and Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision. The parties agree to comply with the remaining terms of the Terms and Conditions.

21. The Company shall be entitled to perform any of its obligations and/or exercise any of the rights granted to it through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985) or the subsidiary of any such holding company, and any act or omission of any such company shall be deemed to be the act or omission of the Company.

22. The Customer acknowledges that in entering into these Terms and Conditions it does not do so on the basis of, or rely on, any representation, warranty or other provision except as expressly provided in these Terms and Conditions and, accordingly, all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law. The Customer accepts that the Company's employees, sub-contractors and agents are not authorised to make any representation(s) concerning the Services unless those representations are confirmed by a Director of the Company in writing. The Customer undertakes that it will not rely on, and accordingly waives any claim for breach of, any representation(s) which are not confirmed by a Director of the Company in writing.

23. The Company reserves the right to amend any term of these Terms and Conditions at anytime. The Customer shall only be entitled to amend these Terms and Conditions if the prior written consent of the Company is obtained. Amendments

by the Customer shall only be valid if they are in writing and have been signed by a Director of the Company.

24. The Company shall be entitled to carry out any of its obligations through its agents or sub-contractors.

25. These Terms and Conditions shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

26. These Terms and Conditions comprise the entire understanding between the parties regarding the provision of the Services and supersedes all prior, written and oral understandings relating thereto.

27. The Customer may not, without the prior written consent of the Company, sell, assign, mortgage, charge or dispose of any of its rights under these Terms and Conditions or sub-contract or otherwise delegate any of its obligations. Any such attempted sale, assignment, mortgage, charge or disposal shall be void. The Company may sell, assign, mortgage, charge or dispose of any of its rights hereunder.

28. The Company and the Customer agree that The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to these Terms and Conditions to the maximum extent permitted by law. No term of these Terms and Conditions is enforceable by any person who is not a party to it, whether in accordance with such Act or otherwise.

29. These Terms and Conditions do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

30. The Company shall be entitled to place any information provided by the Customer in a computerised directory. The Customer agrees to the Company passing on its personal details to other companies and to those other companies using the details passed on for the purposes of marketing and marketing research.

31. Any notice or other information required or authorised by these Terms and Conditions to be given by the Customer to the Company must be sent by first class registered post to the Company at the address set out in these Terms and Conditions. The Company may serve the Customer with notice via email, regular mail and/or postings on its website.

32. These Terms and Conditions shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Law Courts.

33. In the event that the Customer fails to pay the Company any monies due under these Terms and Conditions or otherwise then the Customer accepts that the Company may bring a claim against it for non-payment in any jurisdiction in which the Customer or its assets are located.

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