

# SERVICING (MAINTENANCE) OF COMPUTER EQUIPMENT

## INDEX

Clause No	Title
1	Definitions
2	Duties
3	Mistakes in information
4	Standard of the service
5	The premises
5.1	Facilities
5.2	Access
5.3	Contractor's supplies and equipment
5.4	Permission to work
6	Variations
7	Customer's responsibilities
8	Contractor's default
9	Intellectual property rights
10	Level of availability
11	Standard of performance
12	Assignment and sub-letting
13	Indemnity and insurance
14	Consequential loss
15	Charges and terms of payment
16	Recovery of sums due
17	Insolvency and bankruptcy
18	Duration and termination
19	Statutory and other regulations
20	Waiver
21	Confidentiality and data protection
22	Force majeure
23	Consumable supplies
24	Attachments to the equipment
25	Replacement parts
26	Publicity
27	Operating and service records
28	Notices
29	No third party rights
30	Expert determination
31	Dispute resolution
32	Law

## 1. DEFINITIONS

- 1.1 'Contract' shall mean the agreement between the Customer and the Contractor for the provision of the Service described therein, including all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.
- 1.2 'Contractor' shall mean the person, firm or company named as such in the Contract as responsible for carrying out the Service and shall include the Contractor's legal personal representatives, successors and permitted assigns.

- 1.3 'Customer' shall mean the person, firm or company named as such in the Contract for whom the Service is to be carried out and shall include the Customer's legal personal representatives, successors and permitted assigns.
- 1.4 'Equipment' shall mean those items specified in the Contract as subject to the Service.
- 1.5 'Premises' shall mean the place or places other than the Contractor's premises where the Service is to be provided, as described in the Contract.
- 1.6 'Service' shall mean preventive and/or corrective maintenance and all other work to be carried out by the Contractor in accordance with the provisions of the Contract.
- 1.7 'Service Charge' shall mean the charge specified in the Contract together with any additions thereto or deductions therefrom agreed in writing under the Contract.
- 1.8 'Sub-Contractor' shall mean any person, firm or company to whom any part of the Contract has been sub-let in accordance with the Contract and its legal representatives, successors and permitted assigns.
- 1.9 'Supervising Officer' shall mean the person for the time being or from time to time duly appointed by the Customer and notified in writing to the Contractor, to act as the Customer's representative for the purpose of the Contract or in default of such notification the Customer.

## **2. DUTIES**

The Contractor agrees to provide to the Customer and the Customer agrees to accept the provision of the Services to maintain the Equipment at the Premises on the terms and conditions of the Contract. The Contractor shall be deemed to have examined the Premises, the requirements specified and these conditions. Subject to the provisions of Clause 3.2 no claim from the Contractor for additional payment shall be allowed on the grounds of misinterpretation of any matter relating to the Premises, the requirements specified or these conditions on which the Contractor could reasonably have satisfied itself by a visit to the Premises, reference to the Supervising Officer, or such other means as may have been appropriate.

## **3. MISTAKES IN INFORMATION**

- 3.1 The Contractor shall be responsible for and shall pay extra costs directly occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by it, whether they have been approved by the Customer or not, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to the Contractor by the Customer.
- 3.2 The Customer shall be responsible for and shall pay extra costs directly occasioned by any discrepancies, errors or omissions in the drawings, information and decisions supplied in writing to the Contractor by the Customer.

## **4. STANDARD OF SERVICE**

The standard of the Service shall be in accordance with the Contract. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall use good quality materials, techniques and standards and provide the Service with the care, skill and diligence required in accordance with best computing engineering practice.

## **5. THE PREMISES**

### **5.1 Facilities**

- 5.1 The Contractor shall provide everything necessary for the provision of the Service except that the Customer shall make available to the Contractor a supply of electricity and such other services as are reasonably required and available for the provision of the Service. The Contractor shall be permitted to use these services at its own risk and shall at its own expense provide any apparatus necessary for utilising such services.

### **5.2 Access**

- 5.2.1 The Supervising Officer shall afford to the authorised personnel of the Contractor at all reasonable times and with prior agreement, such access to the Premises (but not necessarily sole access) as may be necessary for the inspection thereof and for the provision of the Service, provided always that the Supervising Officer shall have the right to refuse to admit to, or to order the removal from, the Premises of any person employed by or acting on behalf of the Contractor or Sub-Contractor who in the reasonable opinion of the Supervising Officer is not a fit and proper person to be on the Premises. Action taken under this Clause shall forthwith be confirmed in

writing to the Contractor by the Supervising Officer and shall not relieve the Contractor of its obligations under the Contract.

- 5.2.2 The Contractor shall take reasonable care to ensure that in the provision of the Service, it does not interfere with the operations of the Customer, its employees or any other contractor employed on the Premises whether or not the Contractor is provided with sole access to the Premises.

### **5.3 Contractor's supplies and equipment**

The Contractor shall be responsible at its own risk and expense for the delivery to, unloading at and removal from the Premises of all plant, equipment and things of all kinds necessary for the provision of the Service except as provided in Clause 7.4. Unless otherwise agreed all such items shall remain the responsibility of the Contractor which shall be liable for the care, safety and storage thereof and shall remove them at the end of each visit and leave the Premises in a clean, tidy and safe condition.

### **5.4 Permission to work**

The Contractor may work on the Premises only with the authorisation of the Supervising Officer.

## **6. VARIATIONS**

- 6.1 In the event that the Customer shall require any reasonable alteration or addition to or omission from the Service or any part thereof (hereinafter referred to as a Variation), the Contractor shall state in writing the effect such Variation will have on the Service and level of availability (see Clause 10) and what adjustment, if any, will be required to the Service Charge. The Contractor shall furnish such details within 14 days of receipt of the Customer's written request or such other period as may be agreed.

- 6.2 A Variation under Sub-Clause 6.1 shall not invalidate the Contract but if such Variation involves an increase or decrease in the cost to the Contractor of providing the Service an adjustment to the Service Charge shall be made with effect from the date of implementation of the Variation. The Contractor shall satisfy the Customer as to the reasonableness of the extra costs or savings resulting from Variations under this Clause.

- 6.3 The Contractor shall not vary the Service in any respect unless instructed in writing to do so by the Customer.

## **7. CUSTOMER'S RESPONSIBILITIES**

- 7.1 The Customer shall be responsible for ensuring that the necessary environmental conditions are maintained for the Equipment and that it is operated in a proper manner by competent staff. In the event that the cost to the Contractor of providing the Service is increased as a direct result of the Customer's failure to comply with the above, the reasonable additional cost thereby incurred shall be paid by the Customer to the Contractor.

- 7.2 Except as provided for under Clause 8, neither the Customer's personnel nor any third party employed by the Customer shall provide any part of the Service on any item of the Equipment or move or adjust the Equipment except with the prior agreement of the Contractor, which shall not be unreasonably withheld. Nothing in the above shall affect the Customer's right to make configuration changes in accordance with, and within the limits specified in, the Contractor's documentation.

- 7.3 Upon reasonable request by the Contractor, the Customer shall make available, free of charge, to the Contractor's authorised personnel such operational and/or systems programming staff, data and programs as the Customer may consider appropriate for such purpose as shall be defined in the Contractor's request. Nothing contained in this Sub-Clause shall relieve the Contractor of its responsibility for providing the Service.

- 7.4 Unless otherwise agreed the Customer shall provide free of charge to the Contractor suitable working facilities and storage space for the Contractor's maintenance equipment and spare parts required to provide the Service. Nothing contained in this Sub-Clause shall relieve the Contractor of its responsibilities under Clause 5.

## **8. CONTRACTOR'S DEFAULT**

- 8.1 If the Contractor shall fail to provide the Service or any part thereof with due diligence and expedition, or shall refuse or fail to comply with any reasonable order given to it in writing by the Customer in connection with such default, or shall contravene any provisions of the Contract, the

Customer may immediately give notice in writing to the Contractor to make good such failure or contravention.

- 8.2 Should the Contractor fail to comply with the notice referred to in Sub-Clause 8.1, without prejudice to the provisions in clause 18, either within seven days from receipt of such notice of failure or contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then without prejudice to any other right it may have under the Contract the Customer may, subject to prior notification to the Contractor:-
- (i) employ others to provide that part of the Service which the Contractor shall have failed to provide
  - or
  - (ii) take the Service in whole or in part out of the Contractor's hands and recontract with others to provide the Service in whole or in part as may be appropriate.
- 8.3 If the cost to the Customer of employing others to provide part or all of the Service in accordance with Sub-Clause 8.2 shall exceed the Service Charge which would have become payable to the Contractor had it completed that part or all of the Service, then the Customer shall have the right to charge such excess cost to the Contractor and the Customer shall also have the right to retain part or all of any sum which would otherwise be due to the Contractor under the Contract and set such sum against the excess due from the Contractor. For the avoidance of doubt the provisions of this Sub-Clause do not extend to that part of the cost payable by the Customer to a third party in respect of any enhancement to the Service.
- 8.4 If the Contractor fails to provide the Service in part or in whole, the Contractor shall refund to the Customer any advance payment made in respect of that portion of the Service not provided, without prejudice to the Customer's other rights and remedies hereunder.
- 8.5 Nothing in this Clause shall, in the event of a malfunction, prevent emergency action being taken by the Customer to meet its operational requirements but, if such action results in the Contractor incurring additional costs in providing the Service, such reasonable costs shall be reimbursed to the Contractor by the Customer provided such emergency action is not taken as a result of failure by the Contractor.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Contractor shall fully indemnify and hold harmless the Customer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, registered or unregistered design, copyright, trade mark or any other intellectual property right arising from its performance of the Services provided:-
- (i) The Customer must promptly notify the Contractor in writing of any alleged infringement of which it has notice;
  - (ii) the Customer must make no admissions without the Contractor's consent;
  - (iii) the Customer, at the Contractor's request and expense, shall allow the Contractor to conduct and/or settle all negotiations and litigation and shall give the Contractor all reasonable assistance. The costs incurred or recovered in such negotiations or litigation will be for the Contractor's account.
- 9.2 If at any time any allegation of infringement of patent, registered or unregistered design, copyright, trade mark or other intellectual property right is made in respect of any parts provided for or modifications made to the Equipment by the Contractor in providing the Service, or in the Contractor's reasonable opinion is likely to be made, the Contractor may at its own expense modify or replace such parts or modifications, without detracting from the overall performance of the Equipment, the Contractor making good to the Customer any loss of use of the Equipment during modification or replacement, so as to avoid the infringement. The procedures detailed in Clause 6 shall then take effect as if the Customer had required a Variation, save that the Contractor shall not be entitled to request any increase to the Service Charge.

## **10. LEVEL OF AVAILABILITY**

- 10.1 The Contractor warrants it shall ensure the level of availability. The level of availability shall be the proportion of time that the Equipment is to be available for effective use by the Customer during the hours of maintenance cover provided by the Contractor, and shall be as stated in the Contract.
- 10.2 Where the level of availability is not stated in the Contract, the Service shall be in accordance with the programme of maintenance, call-out response times and any other criteria as stated in the Contract.

- 10.3 In the event that either the level of availability or the criteria for the Service as stated in the Contract are not met, the provisions of Clause 8 shall apply.

**11. STANDARD OF PERFORMANCE**

- 11.1 The standard of performance shall be the ability of the Equipment to meet the throughput, response times and other criteria specified in the Contract. In the provision of the Service the Contractor shall ensure that such standard of performance is not impaired.
- 11.2 If the Customer can demonstrate that the standard of performance of the Equipment has been impaired by an act or omission of the Contractor or any Sub-Contractor, the Contractor shall, at its own expense, immediately take remedial action to restore such standard of performance.

**12. ASSIGNMENT AND SUBLETTING**

- 12.1 Neither party shall assign the Contract or any of its rights or obligations thereunder without first having received the written approval of the other party (provided that the Customer may assign the benefit of the Contract to any of its associated or subsidiary companies or to any leasing or financing company of its choice).
- 12.2 The Contractor shall not sub-Contract the Contract or any part thereof without having first obtained the written permission of the Customer, provided that this restriction shall not apply to sub-Contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub-Contractor is named in the Contract.
- 12.3 The Contractor shall be responsible for the acts, defaults and omissions of its sub-Contractors, whether approval has been given to their appointment under this Clause or not, as if they were its own and any consent given under this Clause shall not relieve the Contractor of any of its obligations under the Contract

**13. INDEMNITY AND INSURANCE**

- 13.1 The Contractor shall indemnify and keep indemnified the Customer against injury (including death) to any persons or loss or damage to any property which may arise out of the act, default or negligence of the Contractor, a Sub-Contractor, their employees or agents in consequence of the Contractor's obligations under the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 13.2 The Customer shall indemnify and keep indemnified the Contractor for the duration of the Contract against injury (including death) to any persons or loss of or damage to any property which may arise out of the act, default or negligence of the Customer or any contractor employed by the Customer (other than the Contractor or a Sub-Contractor) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 13.3 Without thereby limiting their responsibilities under Sub-Clauses 13.1 and 13.2 each party shall insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in consequence of its obligations under the Contract and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clause 13.4 and Clause 14.
- 13.4 The liability of the parties under Sub-Clause 13.1 or 13.2 as appropriate, shall exclude damage or injury (other than injury including death resulting from negligence) consequent upon design, formula, specification or advice. Except in respect of personal injury or death of a person due to negligence for which no limit applies, the liability of the parties under the Contract shall not exceed the sums specified in the Appendix to these Conditions in respect of any event or series of connected events.

**14. CONSEQUENTIAL LOSS**

Save as expressly stated elsewhere in the Contract and except as regards liability for death or personal injury caused by its negligence neither party shall be liable to the other for consequential loss or damage, loss of revenue, opportunity or contract or goodwill.

**15. CHARGES AND TERMS OF PAYMENT**

- 15.1 The Customer shall pay the Service Charge at the time and in the manner specified in the Contract. Any variation to the Service Charge will be subject to three months' written notice in advance by the Contractor. Before such variation is implemented, the Contractor shall satisfy the Customer that the variation proposed is reasonable. In the event of the Contractor failing to satisfy the Customer of the

- reasonableness of the variation then notwithstanding the provisions of Clause 18 the Customer shall have the right to terminate the Contract on the effective date of such revised charge.
- 15.2 If repairs or replacements are required or additional costs are incurred by the Contractor as a result of any failure in operation, default, or negligence of the Customer or any third party other than a Sub-Contractor, the Contractor shall have the right to make a reasonable additional charge in respect thereof.
- 15.3 The Customer reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or which covers or purports to relate to the Service or any part thereof which has not been provided in accordance with the Contract and shall forthwith notify the Contractor accordingly in writing. Any payment withheld under this Sub-Clause shall be promptly paid to the Contractor upon the matter being rectified.
- 15.4 The Service Charge shall be subject to value added tax. Unless the Contract otherwise provides the Service Charge includes all expenses of the Contractor, including without limitation travel, accommodation and subsistence expenses.

**16. RECOVERY OF SUMS DUE**

- 16.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Customer.
- 16.2 Exercise by the Customer of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Customer under the Contract.

**17. INSOLVENCY AND BANKRUPTCY**

- 17.1 If the Contractor shall become insolvent or bankrupt or have a receiving order or administration order or administration order made against it or compound with its creditors or being a corporation commence to be wound up not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, the Customer shall be at liberty either to terminate the Contract forthwith by notice in writing to the Contractor or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested or to give such administrative receiver, administrator, liquidator or other person the option of carrying out the Contract subject to its providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed. In the event of termination under this Sub-Clause the Customer shall have the right, by prior notice to the Contractor, to enter its premises for the purpose only of removal of any items of equipment or materials which are clearly marked as being the property of the Customer.
- 17.2 If the Customer shall become insolvent or bankrupt or have a receiving order or administration order made against it or compound with its creditors or being a corporation commence to be wound up not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, the Contractor shall be at liberty to terminate the Contract forthwith by notice in writing to the Customer or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested. In the event of termination under this Sub-Clause the Contractor shall have the right, by prior notice to the Customer, to enter the Premises for the purpose only of removal of any items of equipment or materials which are clearly marked as being the property of the Contractor.
- 17.3 The exercise of rights under this Clause shall be without prejudice to any other rights or obligations of either party.

**18. DURATION AND TERMINATION**

- 18.1 The Contract shall continue until terminated in accordance with the provisions of this Clause, Clause 8, Clause 15.1 and Clause 17.
- 18.2 The Customer may terminate the Contract by giving three months' prior written notice to the Contractor to expire at the end of the minimum period specified in the Contract or at the end of such extension of this period as may be agreed or, if no initial period is stated, by three months' prior written notice to the Contractor at any time.

- 18.3 The Contractor may terminate the Contract by giving six months' prior written notice to the Customer to expire at the end of the minimum period specified in the Contract or at the end of such extension of this period as may be agreed or, if no initial period is stated, by twelve months' prior written notice to the Customer at any time.
- 18.4 Either party may terminate this Contract forthwith by written notice to the other effective from the date of service of such notice if:
- (a) there is a breach by the other party of any provision of the Contract which expressly entitles the party not in breach to terminate the Contract.
  - (b) there is a material or persistent breach by the other party of any other term of the Contract, which is not remediable, or if it is remediable has not been remedied within 30 days of the service of written notice to the defaulting party specifying the breach and requiring it to be remedied.
- 18.5 On termination other than for the default of the Contractor the Customer shall pay to the Contractor the proportion of the Service Charge payable in respect of the materials supplied and/or services performed by the Contractor up to the date of termination together with the costs of the commitments already entered into by the Contractor at the date of termination of the Contract less the amount of any payments already made to the Contractor up to the date of termination. If the amount of payments already made to the Contractor at the date of termination exceeds the sum due to the Contractor under this sub-Clause then the Contractor shall repay the balance due to the Customer. Any such payment shall be in full satisfaction of the Contractor's rights to payment, compensation or damages in respect of the termination or the breach of Contract giving rise to the right of termination.
- 18.6 If the Contract is terminated by reason of the default of the Contractor the Customer shall only pay to the Contractor the proportion of the Service Charge payable in respect of the work done and /or services performed by the Contractor up to the date of termination after deduction of payments already made to the Contractor, the costs reasonably incurred by the Customer in obtaining the completion of the work to be performed under the Contract by others and any damages which may be payable by the Contractor in respect of the termination or the breach of the Contract giving rise to the right to termination. If the amount due to the Contractor is less than the amount which the Customer is entitled to deduct then the Contractor shall pay the balance to the Customer.
- 18.7 Following the termination of the Contract neither party shall have any further rights or obligations in relation to the other party other than those stated in this Clause and in the Clauses listed below which shall continue in full effect. Subject to sub- 18.5 above termination shall not however affect the rights of action and remedy of the parties which shall have accrued at the date of termination or shall thereafter accrue.
- 18.8 The clauses below shall survive termination of this Agreement from any cause:  
Confidentiality  
Publicity  
Waiver  
Infringement Indemnity  
Governing Law and Jurisdiction  
Intellectual property rights  
Property in materials  
Conditions and warranties relating to the goods supplied and/or services provided under the Contract.
- 18.9 The exercise of rights under this Clause shall not prejudice any existing rights or obligations of either party.

## **19. STATUTORY AND OTHER REGULATIONS**

- 19.1 The Contractor shall in all matters relating to the performance of the Contract comply with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities. The Contractor shall also observe through its staff and work people any rules applicable to the Premises. The Customer shall on request afford all reasonable assistance to the Contractor in obtaining information as to local conditions. The Contractor shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Contractor in meeting the

- requirements of this Sub-Clause shall be included in the Contract Price, except as provided under Sub-Clause 25.3.
- 19.2 The Contractor shall give the Customer such prior written notice as the Customer may require of the delivery under the Contract of any goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Customer on the delivery of such goods and their subsequent storage or handling.
- 19.3 The Contractor shall ensure that all such goods are suitably packed and identified at the time of delivery with reference to the hazards attaching to them.
- 19.4 If the cost to the Contractor of the provision of the Service shall be increased or reduced by reason of the making after the date of the Contract of any law or any order, regulation or bye-law having the force of law that shall be applicable to the Contract (other than any tax upon profits or revenue), the amount of such increase or reduction shall be added to or deducted from the Service Charge.
- 19.5 In the event that either party incurs costs to which it would not otherwise be liable due to the other party's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed by the other party.
- 19.6 The Contractor shall ensure that its Sub-Contractors are bound by the requirements of this clause.
- 19.7 The Contractor undertakes that it and its employees, agents and sub-Contractors will at all times comply with all health and safety requirements relating to the carrying out of the work under the Contract. Such requirements include in addition to statutory laws and regulations any codes of practice and British Standards or their equivalent relating to Health or Safety which may be applicable to the performance of the Contract. In the performance of the Contract the Contractor shall conform to all relevant environmental standards, guidelines and Codes of Practice and shall take all practical steps in the design of the work to be performed under the Contract to minimise any risk to the environment.

## **20. WAIVER**

Any failure by the Customer to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Customer's rights to require the future performance of any such term, provision or undertaking but the obligation of the Contractor with regard to the same shall continue in full force and effect

## **21. CONFIDENTIALITY AND DATA PROTECTION**

- 21.1 Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause.
- 21.2 The obligations expressed in sub-Clause 1 above shall not apply to any information which:
- (a) is or subsequently comes into the public domain otherwise than by breach of this Clause
  - (b) is already in the possession of the receiving party without an accompanying obligation of confidentiality
  - (c) is obtained from a third party who is free to divulge the same
  - (d) is independently and lawfully developed by the recipient or its sub-Contractor outside the scope of the Contract.
- 21.3 So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the subject matter of the Contract each party may divulge any information to be kept confidential under sub-Clause 1 of this Clause to their employees, agents and approved sub-Contractors, if any, on a "need to know" basis but undertake that they will ensure compliance by such employees, agents, and sub-Contractors with the obligations as to confidentiality expressed in this Clause and will be responsible to the other party for any failure by any employee, agent or sub-Contractor to comply with such obligations whether such employee, agent or sub-Contractor was aware of them or not.
- 21.4 Both parties shall ensure that they, their employees, agents and sub-Contractors shall observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto in the provision and use of the subject matter of the Contract and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.

21.5 The provisions of this Clause shall continue in perpetuity.

**22. FORCE MAJEURE**

22.1 For the purpose of the Contract the term Force Majeure shall mean:

- (a) war and other hostilities including terrorist activities, (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
- (b) rebellion, revolution, insurrection, military or usurped power or civil war
- (c) riot, commotion or disorder except where solely restricted to employees of the Contractor or its sub-Contractors or subsuppliers
- (d) earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming Force Majeure.

Force majeure shall not include a general industrial dispute or failure by approved sub-contractors.

22.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then it shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.

22.3 Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Contract and which was not foreseeable at the date of the Contract.

22.4 If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period of less than 30 days then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the Contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties or, in default of such agreement, as may be determined by an Expert appointed under this Agreement.

Notwithstanding such suspension the Contractor shall use its reasonable endeavours to assist the Customer in the performance of the Contract.

22.5 If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Contract shall be terminated by mutual consent and, subject to sub-Clause 22.6 below neither party shall be liable to the other as a result of such termination.

22.6 If the Contract is so terminated then subject to the transfer to the Customer of the benefit referred to in sub-Clause 22.7 below the Customer shall pay to the Contractor such reasonable sum as may be agreed between the parties or in default of agreement as may be determined by Expert Determination in accordance with this Agreement in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to the Contractor under this sub-Clause then the Contractor shall repay the balance to the Customer

22.7 The Contractor shall transfer to the Customer the benefit of all work done by it or its approved sub-Contractors if any and sub-suppliers in the performance of the Contract up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the Contractor prior to the Force Majeure notice or will do so on the payment under sub-Clause 22.6 above.

**23. CONSUMABLE SUPPLIES**

23.1 The Customer reserves the right to procure magnetic media and any other consumable supplies to be used on and suitable for the Equipment from the Contractor or such other source as the Customer may deem appropriate. Such procurement from a source other than the Contractor shall not invalidate any rights of the Customer under the Contract.

23.2 If the Customer is using consumable supplies which do not meet the Equipment manufacturer's standard technical specification and the Contractor can prove that such use has increased the cost of providing the Service, or part thereof, then the Customer shall pay to the Contractor such additional costs thereby incurred.

**24. ATTACHMENTS TO THE EQUIPMENT**

24.1 The Customer shall have the right to attach to the Equipment free of charge any equipment not supplied by the Contractor. If the Customer notifies the Contractor in writing of the intention to make such attachment, it shall be a duty on the Contractor to notify the Customer forthwith if it has or subsequently receives any information to show that such attachment is or could be detrimental to the efficient operation of the Equipment.

24.2 In the event that the attachment is made by the Customer and the Contractor can prove that such attachment is adversely affecting the Equipment, then the Contractor shall be entitled to be reimbursed any additional costs of maintenance which it can prove have arisen as a result of the attachment.

**25. REPLACEMENT PARTS**

25.1 Any replacement parts provided by the Contractor under the Contract shall be either new or of substantially equal quality and such replacement parts shall become the property of the Customer.

25.2 Parts removed from the Premises shall become the property of the Contractor which shall, unless otherwise agreed by the Customer, erase or destroy any Customer data contained thereon, save that where parts removed contain Customer data, the Customer shall have the right to retain possession of the defective part, in which case the Contractor may make a reasonable charge therefor.

25.3 Subject to the Contractor submitting details and obtaining the prior written consent of the Customer, it may in providing the Service, at its own expense, modify the Equipment or replace any part with a part not complying with the original specification. In this event the Contractor shall guarantee in writing that such modification or replacement will not degrade the standard of performance of the Equipment or increase the Service Charge. The Contractor shall fully indemnify the Customer against any increases in the costs of operation of the Equipment resulting from such modification or replacement.

25.4 In the event that any part of the Equipment is modified or replaced in accordance with Sub-Clause 25.3, the Customer shall have the right to require the Contractor, at the Contractor's own cost, to submit the Equipment to such reasonable tests as may be appropriate to demonstrate that the standard of performance of the Equipment has not been degraded. If the tests show that the standard of performance of the Equipment has been degraded the Contractor shall, at its own cost, take such steps as may be necessary to remedy such degradation.

**26. PUBLICITY**

Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Contract or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose

**27. OPERATING AND SERVICE RECORDS**

27.1 The Contractor shall maintain records of all visits to the Premises and details of the Service provided. Copies of such records shall be readily available to the Customer together with such additional information as the Customer may reasonably require. The Contractor shall provide a certificate detailing the Service provided and the period taken, if requested to do so by the Customer.

27.2 The Customer shall maintain operating records of the Equipment. Copies of such records shall be readily available to the Contractor together with such additional information as the Contractor may reasonably require.

**28. NOTICES**

28.1 Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Contract either (a) by hand; (b) by registered or first class post or recorded delivery or (c) by facsimile or electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

28.2 Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post or recorded delivery; two working days after posting, sent by facsimile or electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day,

but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

**29. NO THIRD PARTY RIGHTS**

Nothing in this Contract shall confer, nor is it intended to confer, any enforceable right on any third party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

**30. EXPERT DETERMINATION**

Where under the Contract any issue is to be determined by an Expert then:

- (a) either party may give 7 days' notice in writing to the other requiring expert determination by an Expert to be agreed between the parties or nominated as referred to below
- (b) within 14 days of the receipt of such notice the parties shall have agreed on the choice of an Expert or in default of agreement the Expert shall be nominated by the President for the time being of the British Computer Society on the application of either party
- (c) the Expert shall act in accordance with such procedure as the Expert may in its sole discretion decide provided that it shall act impartially as between the parties
- (d) the Expert shall reach a decision within 56 days of its appointment, which decision shall except in the case of fraud be final and binding on the parties
- (e) the Expert shall sit as an expert and not as an arbitrator.

The Expert shall not be liable for anything done or omitted to be done in the discharge or purported discharge of its duties as an Expert unless the act or omission was done in bad faith.

**31. DISPUTE RESOLUTION**

31.1 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, except any matter which under the Contract is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be litigated, without prejudice to either party's right at any time to obtain immediate interim court relief.

31.2 The parties submit to the exclusive jurisdiction of the English courts in connection with any dispute hereunder.

**32. LAW**

Unless otherwise agreed in writing between the parties, the Contract shall be subject to and construed and interpreted in accordance with English Law

*APPENDIX*

**INDEMNITY AND INSURANCE**

**Clause 13.4**

The liability of the Contractor to the Customer under Sub-Clause 13.1 in respect of any one act or default shall not exceed £.....

**Clause 13.4**

The liability of the Customer to the Contractor under Sub-Clause 13.2 in respect of any one act or default shall not exceed £.....

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Since we are unable to know the circumstances in which these conditions are used, CIPS will not accept any liability for their usage. It is the responsibility of you, the user to decide whether they are suitable for your purpose and what modifications, if any, are required to make them suitable and for which purpose you might need to take professional advice.

*CIPS Model M*  
*Revised November 2002*

# **SERVICING (MAINTENANCE) OF COMPUTER EQUIPMENT**

## **WITH NOTES FOR GUIDANCE**

### *SHORTENED FORM*

#### **1. DEFINITIONS**

- 1.1 'Contract' shall mean the agreement between the Customer and the Contractor including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.
- 1.2 'Contractor' shall mean the person, firm or company named as such in the Contract as responsible for carrying out the Service and shall include the Contractor's legal personal representatives, successors and permitted assigns.
- 1.3 'Customer' shall mean the person, firm or company named as such in the Contract for whom the Service is to be carried out and shall include the Customer's legal personal representatives, successors and permitted assigns.
- 1.4 'Equipment' shall mean all those items specified in the contract as subject to the Service.
- 1.5 'Premises' shall mean the place or places where the Service is to be provided, as described in the Contract.
- 1.6 'Service' shall mean preventive and/or corrective maintenance and all other work to be carried out by the Contractor in accordance with the provisions of the Contract.
- 1.7 'Service Charge' shall mean the charge specified in the Contract together with any additions thereto or deductions therefrom agreed in writing under the Contract.

#### **2. THE SERVICE**

- 2.1 The Service shall be provided in accordance with the Contract and with the care, skill and diligence required in accordance with best computing engineering practice. The Contractor must take reasonable care to ensure that in providing the Service it does not interfere with the operations of the Customer or other contractors employed at the Premises.
- 2.2 The Contractor shall, at its own expense, supply everything necessary for the provision of the Service except as otherwise agreed in writing by the Customer.
- 2.3 Neither the Customer's personnel nor any third party employed by the Customer shall provide any part of the Service without the prior agreement of the Contractor which shall not be unreasonably withheld.

#### **3. THE PREMISES**

- 3.1 The Customer shall, with its prior agreement, provide such reasonable access to the Premises and facilities therein as the Contractor may require for the provision of the Service. The Contractor may work on the Premises only with the authorisation of the Customer.
- 3.2 The Customer shall be responsible for ensuring that the necessary operational and environmental conditions are maintained for the Equipment.

#### **4. MISTAKES IN INFORMATION**

- 4. The Contractor and the Customer shall each be responsible for the accuracy of drawings, documentation and information supplied by them to the other party and shall pay to the other party any extra costs occasioned by any discrepancies, errors or omissions therein.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

- 5. The Contractor shall fully indemnify the Customer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, registered or unregistered design, copyright, trade mark or any other intellectual property right as a result of the provision of the Service.

**6. ASSIGNMENT AND SUBLETTING**

Except where otherwise provided by the Contract, the Contractor shall not assign, pledge, transfer or sublet the Contract or any part thereof without the prior written consent of the Customer.

**7. INDEMNITY AND INSURANCE**

7.1 The Contractor shall indemnify the Customer against and insure against injury (including death) to any person or loss or damage to any property which arises out of the act, default or negligence of the Contractor, its agents or sub-contractors.

7.2 The Contractor shall not be liable to the Customer for:-

- (i) damage to property or injury to persons resulting from the act, default or negligence of the Customer, its agents or sub-contractors.
- (ii) any loss of profit or contracts or other consequential losses arising out of the said damage or injury.

7.3 Nothing in this Contract shall exclude or limit either party's liability to the other for death or personal injury caused by its negligence.

**8. TERMS OF PAYMENT**

The Customer shall pay the Service Charge at the time and in the manner specified in the Contract. Any variation to the Service Charge will be subject to three months' written notice in advance by the Contractor. Before such variation is implemented, the Contractor shall satisfy the Customer that the variation proposed is reasonable.

**9. STATUTORY AND OTHER REGULATIONS**

The Contractor shall comply at its own expense with all Acts of Parliament and all statutory orders, regulations and bye-laws applicable to the Contract. The Contractor shall also observe at its own expense all regulations applicable to the Premises, details of which will be provided by the Customer.

**10. CONFIDENTIALITY**

The Contractor and the Customer shall keep confidential all information of the other party designated as confidential obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party.

**11. FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control.

**12. CONSUMABLE SUPPLIES**

12.1 The Customer reserves the right to procure magnetic media and any other consumable supplies to be used on and suitable for the Equipment from the Contractor or such other source as the Customer may deem appropriate. Such procurement from a source other than the Contractor shall not invalidate any rights of the Customer under the Contract.

12.2 If the Customer is using consumable supplies which do not meet the Equipment manufacturer's standard technical specification and the Contractor can prove that such use has increased the cost of providing the Service, or part thereof, then the Customer shall pay to the Contractor such additional costs thereby incurred.

**13. ATTACHMENTS TO THE EQUIPMENT**

13.1 The Customer shall have the right to attach to the Equipment free of charge any equipment not supplied by the Contractor. If the Customer notifies the Contractor in writing of the intention to make such attachment it shall be a duty on the Contractor to notify the Customer forthwith if it has or subsequently receives any information to show that such attachment is or could be detrimental to the efficient operation of the Equipment.

13.2 In the event that the attachment is made by the Customer and the Contractor can prove that such attachment is adversely affecting the Equipment, then the Contractor shall be entitled to be reimbursed any additional costs of maintenance which it can prove have arisen as a result of the attachment.

**14. REPLACEMENT PARTS**

14.1 Any replacement parts provided by the Contractor under the Contract shall be either new or of substantially equal quality and such replacement parts shall become the property of the Customer.

14.2 Parts removed from the Premises shall become the property of the Contractor who shall, unless otherwise agreed by the Customer, erase or destroy any Customer data contained thereon, save that where parts removed contain Customer data, the Customer shall have the right to retain possession of the defective part, in which case the Contractor may make a reasonable charge therefore.

**15. PUBLICITY**

Neither the Contractor nor its sub-contractor(s) shall, without the prior written consent of the Customer, advertise or publicly announce that it is undertaking work for the Customer.

**16. RECORDS OF WORK**

The Contractor shall maintain records of all visits to the Premises and details of the Service provided, copies of which shall be made available to the Customer.

**17. TERMINATION**

Without prejudice to any other provisions of the Contract, the Contract may be terminated

(i) forthwith by either party if the other party is in fundamental breach of the Contract and fails to remedy such breach within 14 days of receipt of notice thereof in writing or if the other party shall become bankrupt or make an arrangement with its creditors to go into liquidation

or

(ii) by either party giving 3 months' notice in writing to the other.

**18. LAW AND JURISDICTION**

Unless otherwise agreed in writing, the Contract shall be construed and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts

**19. NO THIRD PARTY RIGHTS**

Nothing in this Contract shall confer, nor is it intended to confer, any enforceable right on any third party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

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([www.singlelaw.com](http://www.singlelaw.com)) who asserts her right to be identified as author pursuant to the Copyright, Designs and Patents Act 1988.

Since we are unable to know the circumstances in which these conditions are used, CIPS will not accept any liability for their usage. It is the responsibility of you, the user to decide whether they are suitable for your purpose and what modifications, if any, are required to make them suitable and for which purpose you might need to take professional advice.

*CIPS Model M  
Revised November 2002*

# NOTES FOR GUIDANCE

## 1. **INTRODUCTION**

*The objective of the publication of Model Conditions of Contract for the Servicing (Maintenance) of Computer Equipment by the Chartered Institute of Purchasing and Supply is to provide the computer owner with a basis upon which it can negotiate its maintenance requirements. They are not to be used for software maintenance. They are primarily intended for use in connection with the maintenance contracts mentioned in Clauses 29 and 15 respectively of the main and shortened form of Model Conditions of Contract for Supply and Installation (Purchase) of Computer Equipment t (Model Form P) published by the Institute but, as implied therein, they may also be used as a basis for negotiating separate maintenance contracts for any computer equipment owned and these may be with third parties, ie not necessarily the supplier of the equipment. If this is done it may be necessary to check there are no contractual restrictions on obtaining such third party support. The 2002 update of these conditions also replaces the previous Model Form for Servicing and Maintenance of Telecommunications Equipment which is identical to these conditions and thus these conditions are appropriate to use for telecommunications support with the changes referred to below.*

*As with any set of conditions, it is necessary both to understand the intention of the conditions and to apply them in their proper context. For this reason, these Notes for Guidance are issued to assist in the use of the Model Conditions but it must be understood that they do not form part of, or legally interpret the conditions in any way.*

*It is stressed that these are Model Conditions and can be added to or amended to suit the requirements of particular contracts by agreement between the parties concerned. However, in order to secure the advantages of uniformity, it is recommended that such alterations be kept to a minimum.*

*Although suitable for use with quite substantial systems, the shortened form of the maintenance conditions is generally intended to be used for smaller systems purchased on the equivalent shortened form of Model Conditions for Purchase. However, depending on the extent of protection required for any particular Contract, the appropriate clauses from the main conditions may be substituted or the main conditions used in their entirety.*

*The Model Conditions seek to achieve a balanced position between a Customer and a Contractor. Some Customers may want instead to use their own customised conditions which more strongly favour the buyer. The aim in the Model Conditions is to seek to achieve a middle ground. Model Conditions have been published for the following. This list includes this set:-  
Supply and Installation (Purchase) of Computer Equipment - CIPS Model P  
Servicing (Maintenance) of Computer Equipment - CIPS Model M  
Licence Agreement for the Use of Computer Software Products - CIPS Model L  
Software Development - CIPS Model SD  
Support and Maintenance of Bespoke Software - CIPS Model S(M)  
Hire of Computer Staff - CIPS Model CS  
Facilities Management of Computer Operations - CIPS Model FM  
Procurement of IT Systems - CIPS Model IT  
Schedule 8 to Model Form IT is an alternative maintenance agreement to be used in conjunction with Schedule 12 general conditions to Model Form IT.*

## 2. **INVITATIONS TO TENDER**

*Specific reference to the Conditions or a copy of the Conditions should be included in all invitations to tender. If amendments or additions to the Conditions are required, these should be listed on a separate schedule.*

- NB (i) *It is essential that the Customer completes the Appendices before inviting tenders. Tenderers may amend or add to the conditions included in the invitation to tender and these amendments and additions should be separately detailed as part of their tender. However, they will not be binding on the Customer unless accepted by it and incorporated in the Contract.*
- (ii) *If it is intended to invite tenders for maintenance of computer equipment at the same time as the actual purchase, it is essential that both purchase and maintenance conditions are included in the invitation to tender documents and that the tenderers are asked to take into account their warranty obligations under the purchase conditions when quoting service charges for maintenance provided during the warranty period. In certain cases lengthy obligations on the Contractor to provide support, such as for a minimum 5 year period, may be sought in the purchase conditions.*

3. **COMMENTS ON CLAUSES**

*Attention is drawn to the following clauses in the main Conditions, to which it is felt particular notice should be given. Similar comments apply to the appropriate clauses where these occur in the shortened form.*

**Clause 1.1**

*Contracts are usually (a) by a formal Agreement incorporating the applicable conditions, specification, schedules, drawings etc or (b) without a formal Agreement, the tender and its acceptance, together with other relevant correspondence, being relied upon as constituting the Contract between the parties. Whichever method is used, it is essential that reference to any conditions, other than those agreed to be applicable to the Contract, is withdrawn in writing.*

**Clause 1.4**

*It is essential that the items subject to the Service are specified in the invitation to tender and in the Contract.*

**Clause 1.5**

*Sufficient details of the Premises should be included in the invitation to tender and in the Contract to enable the Contractor to take due account of all physical and environmental factors.*

**Clause 1.6**

*It is normal for preventive maintenance to be provided on a scheduled basis agreed between the Customer and the Contractor. If the Customer requires a particular response time to fault calls etc, this must be specified in the invitation to tender and in the Contract.*

**Clause 1.9**

*The Supervising Officer should be appointed and notified as soon as possible after the placing of the Contract.*

**Clause 2**

*The arrangements for examining the Premises should be specified by the Customer in the invitation to tender.*

**Clause 4**

*The Customer should specify the Standard of Service required in the invitation to tender and in the Contract (see also comments on Clauses 10 and 11).*

*For telecommunications contracts this wording could be modified to refer to work being performed " in accordance with best telecommunications practice".*

**Clauses 5.2.1 and 5.4**

*Any special constraints, regulations or procedures (ie, working hours, permits to work etc) affecting the obtaining of access to the Premises should be specified by the Customer in the invitation to tender.*

**Clause 6.1**

*This clause is intended to cover changes in the scope of the Service being provided or amendments to the list of items subject to the Service.*

**Clause 6.2**

*A test of reasonableness for adjustments to the Service Charge could be evidence that the revised charges are in line with the Contractor's standard price list.*

**Clause 7.1**

*The necessary operational and environmental conditions will normally have been specified in the appropriate Contract with the supplier of the Equipment.*

**Clause 7.4**

*Details of the services available for the use by the Contractor should be included in the invitation to tender and in the Contract.*

**Clause 8**

*This clause is intended to give the Customer an alternative course to the simple right of termination given in Clause 18. It should not, however, be invoked unless all other avenues have been explored and the consequences of invoking Clauses 8.2.1 and/or 8.2.2 have been fully considered. Clause 8.3 is not intended to unduly penalise a defaulting Contractor and there is a duty on the Customer to keep the excess cost to a minimum.*

**Clause 10**

*It is essential that the level of availability required of the Equipment is clearly defined in the Contract. Clause 10.1 covers those cases where the Customer can define the proportion of time (usually in the form of a percentage) that the Equipment must be up and running. Clause 10.2 covers those cases where this is not possible and the Contract is based on the Contractor providing a defined maintenance service.*

**NB** *The Customer may choose to include a formula as an Appendix to the Conditions by which the level of availability is to be calculated. This may be associated with a method of redress in the event of failure by the Contractor to achieve the required level of availability. However, it must be pointed out that the construction and operation of such formulae can be complicated and time consuming, whereas the reliance on the provisions of Clause 8, as mentioned in Clause 10.3 may be more acceptable to both the Customer and the Contractor.*

**Clause 11**

*It is essential that the standard of performance, as defined in Clause 11.1 is detailed in the invitation to tender and in the Contract. Many IT contracts incorporate detailed service level requirements as appendices, setting out different categories/priority levels of equipment failure from total failure to minor problem with corresponding response times and times in which the fault will be corrected. The hours of cover should also be set out clearly - 24/7 or 9 - 5pm etc.*

**Clause 12**

*This allows the Customer the right to assign the benefit of the Contract to other members of its group or even to a finance or leasing company of its choice without being required to obtain consent. However except in that case consent is required. Some suppliers will want a right to assign so will remove the restriction or a provision whereby consent to assignment must not be unreasonably withheld.*

**Clause 13**

*This clause may require amending by the Customer to suit its own particular insurance policies and requirements. If the clause in the Model Conditions is used, the sums mentioned in Clause 13.4 must be entered in the Appendix to the Conditions.*

**Clause 15.1**

*The method of payment (ie monthly, quarterly, annually, in arrears, in advance) and the Customer's payment procedures must be clearly defined in the Contract. The variation mentioned in the clause should not be confused with changes covered by Clause 6, and is intended to cover escalation due to changes in costs of labour, materials etc. If a minimum period is stated in the Contract, it must be ascertained whether the Service Charge will remain fixed for this period (see comment on Clause 18 below).*

*The Service Charge may be increased on three months' notice. Some Customers will want the charges fixed for a minimum period instead, such as 12 months and limit increases thereafter to increases in the Retail Prices Index.*

*No interest has been provided to be due on late payments as few buyers you want such a provision and supplier can rely on the Commercial Debts (Interest) Act 1998 and subsequent legislation to claim interest and collection charges.*

**Clause 15.4**

*Many Contractors will charge travel and other expenses. This clause requires that such expenses are included in the Service Charge however the Contract may specify otherwise.*

**Clause 18**

*In clauses 18.2 and 18.3 the differing notice periods exist to give the Customer adequate time to resource its maintenance service should the Contractor wish to terminate the Contract.*

**Clause 19.1**

*Any Customer's rules and regulations regarding the Premises should be clearly stated in the invitation to tender and in the Contract.*

**Clause 21**

*This is an important Clause especially where the Contractor as here will be working at the Customer's premises. If confidential information is to be disclosed during the course of negotiations then a separate agreement covering this should be made and signed prior to the information being released.*

**Clause 22**

*It is essential to define Force Majeure, to state what is to happen if an event of Force Majeure occurs and how the rights and obligations of the parties are to be affected. Force Majeure is defined restrictively and it is for the Contractor to establish that the event prevents it from performing the Contract. If necessary other events could be included but it is strongly suggested that "beyond the Contractor's control" should never be used it is too broad a term. Some Contractors like to include strikes and industrial disputes as Force Majeure but most Customers would dispute such categorisation.*

*There is provided an initial period of suspension; the period could be lengthened if considered appropriate. If the Force Majeure event is then past the parties rights are adjusted. It should not be left to agreement of the parties without a third party reference as otherwise the obligation is unenforceable. If the event continues then the Contract is terminated by mutual consent; the supplier is then paid for the work it has done provided that the Customer is given the benefit of this.*

**Clauses 23 and 24**

*It is essential that both the Customer and Contractor fully understand the implications of these clauses and comply with their obligations thereunder. Because of their importance, they appear in full in the shortened form as Clauses 12 and 13.*

**Clause 28**

*Notice may be provided by email and indeed fax under this clause as long as it is confirmed on paper as provided in this provision.*

**Clause 30**

*Expert Determination: This Clause is a suggestion to overcome the problem that there are Clauses under the CIPS Contract forms where the parties are required to agree on some issue e.g. Force Majeure, Training, Maintenance. Unless there is provision for a third party to decide should the parties not agree, then such a Clause is not enforceable under English law. The name of a suitable nominating body should be included e.g. the British Academy of Experts or the British Computer Society in the case of an IT Contract (as here). For telecommunications contracts an expert from the Institution of Electrical Engineers might be included in the clause instead of the British Computer Society.*

*The period of 56 days is a maximum and the parties may want to see a shorter period included.*

**Clause 31**

*The Agreement provides for preliminary non-binding mediation, failing which disputes go to court. Most UK companies and their advisers agree that court litigation is cheaper than formal arbitration under the Arbitration Act. However arbitration is confidential so a considered judgment must be made in each case.*

*If the contract does not specify arbitration then disputes go to court and it is best in any event to specify which country's courts have jurisdiction (here English courts are chosen) and in clause 31 which country's laws apply to the contract (whether arbitration or litigation are chosen).*

*If arbitration is preferred then the following should be substituted:-*

**DISPUTE RESOLUTION ALTERNATIVE**

1. If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, except any matter which under the Contract is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration in accordance with sub-Clause 2.
2. Subject to sub-Clause 3 below if any dispute or difference which may arise between the parties in connection with or arising out of the Contract is referred to ADR mediation, but is not so settled as specified in sub-Clause 1, then either party shall give notice to the other and such dispute or difference shall be referred to Arbitration. The parties shall agree on the appointment of a single arbitrator within 14 days after the date of such notice or in default of agreement the arbitrator shall be nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators. The Arbitration shall be conducted in accordance with the then current Arbitration Rules as published by the Chartered Institute of Arbitrators and in accordance with the Arbitration Act 1986.
3. There are excluded from Arbitration any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in sub- Clause 1 above."

*This alternative Clause provides for a two-stage process of dispute resolution. The first stage is ADR mediation under the auspices of the CEDR. If in a defined time this is not successful then the dispute is referred to arbitration under the rules of the Institute of Arbitrators.*

*The only exception to the initial stage of ADR is if the Contract specifically provides for Expert Determination to resolve a specific issue. This is also the case with the started litigation clause in the Model Form. Sub-paragraph 3 is included to deal with the problem that if the Contract contains an arbitration Clause then all disputes must go to arbitration which would prevent one party from going to court, unless the other party agreed or did not object. Immediate reference to either the courts or arbitration is contrary to modern purchasing practice and indeed the Civil Procedure Rules 1998, so the first step should be to ADR.*

*One view is that arbitration under the 1996 Act is more flexible and retains the advantage of privacy as opposed to the courts. It is to be preferred generally therefore to the courts.*

**Clause 32**

*If other than English law is to apply (eg Scottish), this clause should be amended accordingly.*

*ENTIRE AGREEMENT: No Clause has been included because usually an entire agreement Clause is to the benefit only of the Contractor. The purpose of such a Clause is to prevent either party from relying on statements made or documents issued pre-Contract which are not included in the Contract but which in some circumstances would be regarded in law as misrepresentations and to ensure no documents such as pre-contract letters, assurances, tenders, specifications etc are part of the Agreement. It is more likely in practice that such statements will be made or documents issued by the Customer in the course of trying to conclude the sale. It therefore has the effect of preventing the Customer from relying on these in any action for misrepresentation. If the Customer however wants important documents such as its statements of requirements to be part of the contract rather than relying on the absence of the entire agreement the Customer must incorporate such documents by express reference in the contract. In addition pre-contract warranties should ideally also be expressly stated in the Contract.*

*End of Notes.*

*Last revised by Susan Singleton, Singletons Solicitors, ([www.singlelaw.com](http://www.singlelaw.com)) who asserts her right to be identified as author pursuant to the Copyright, Designs and Patents Act 1988.*