



TERMS AND CONDITIONS FOR SUPPORT SERVICES

Our Contract

- 1.1. We are Commercial IT Services Limited (company no. 07482128). Our registered office address is at Commercial House, Old Station Drive, Leckhampton, Cheltenham, Gloucestershire, GL53 0DL.
- 1.2. The **Term** of this contract begins on the day that your **Order** is accepted by us and continues for an **Initial Term** unless explicitly stated otherwise on the Order Form. The Initial Term will be 60 months in the case of new machines and 36 months in the case of not new machines.
- 1.3. Unless you end this contract in accordance with its terms, after the expiry of the Initial Term, it will automatically extend for one further 12 month period. The total Term of the contract will not be longer than 6 years.
- 1.4. Your Order is an offer to purchase Services from us and will be accepted when both of us have signed the **Order Form**. If we cannot accept your Order, we will let you know as soon as we can. You cannot change or cancel your Order after it has been accepted by us.
- 1.5. When you order **Equipment** from us, we will provide you with support, maintenance and/or additional services as set out on your Order Form (the **Services**).
- 1.6. This contract (which includes the schedules) constitutes the only terms that apply to your Order and we need to give our permission in writing for any changes to the Services.
- 1.7. Any marketing and or other material is just for example and doesn't form part of our contract with you, nor do any quotations issued by us.

2. The Services

- 2.1. We will provide the Services using our reasonable skill, care and diligence and to a similar standard as others in the industry providing similar services.
- 2.2. In return for receiving the Services, you will pay the **Basic Charge**, the **Scan Charge** and, where relevant, the **Quarterly IT Charge**.
- 2.3. By agreeing to these terms, you acknowledge and agree to the data processing instructions as set out in paragraph 1.7 of Schedule 1.
- 2.4. When you rent Equipment from us, title and ownership of the Equipment remains exclusively with us. You may not sell or dispose of the Equipment or lend or hire it to any third party.

3. Your Responsibilities

- 3.1. During the contract: you will:
 - (a) pay us on time and in full;
 - (b) use good quality paper or other "through-put" material that does not, in our opinion, impair or damage the Equipment or cause us to be called out more than is standard; and

- (c) let us know your meter readings when we ask (where you don't do so within a reasonable time, we will use estimated values instead).

3.2. When you rent Equipment from us, you will:

- (a) ensure that the Equipment is used in a proper manner in accordance with the manufacturer's specifications;
- (b) give us immediate notice of any damage to the Equipment or any theft, seizure or loss of the possession of the Equipment; and
- (c) ensure that the Equipment returned at the end of this Agreement in the same condition as when it was supplied to you (fair wear and tear excepted).

4. Charges

- 4.1. The **Charges** under this contract will be as set out below, on the Order Form or at Schedule 2 (**Charges**).

- 4.2. The **Minimum Support Charge** payable by you in any contract year is £240 per machine. If the sum of the Basic Charge, the Scan Charge and the Quarterly IT Charge in the relevant contract year is less than the Minimum Support Charge, we reserve the right to invoice you for the difference between the sum of such Charges and the Minimum Support Charge.

The Basic Charge

- 4.3. The Basic Charge is based on a cost per page charge for a single-side A4 page (double-sided A4 pages and pages that are larger than A4 are charged as two pages) and does not include:

- (a) network, software, or additional driver support for any device; or
- (b) support for "Fiery" controllers.

- 4.4. Unless otherwise agreed between us, the Basic Charge includes the supply of toner. We will provide toner up to a combined coverage per page of 5% colour (i.e. 20% for full colour copy) or as laid out in the manufacturer's specification. If you use excessive toner, we may charge you for the additional toner.

- 4.5. If you use toner from another supplier, we will not be responsible for any degradation in the Equipment and you will have to pay for any consequent repairs needed to return the Equipment to its full working order.

- 4.6. We will do routine maintenance and repairs to the Equipment between 9 am and 5 pm on a working day.

The Scan Charge

- 4.7. The Scan Charge is calculated from meter readings taken by you or us and is based on a scan of a single sided A4 page where no copy or print is simultaneously made. Double-sided A4 pages and pages that are larger than A4 will count as two scans.

4.8. There is no charge for the first 6000 scans in a calendar quarter but scans over and above this amount are charged at a rate of 0.2p per scan to the end of the quarter.

The Quarterly IT Charge

4.9. For the first 12 months of this contract, we will provide the following services for free:

- (a) first-line IT support for relevant the relevant Services; and
- (b) management and monitoring software on all network connected Equipment.

4.10. After 12 months, you will pay a Quarterly IT Charge for the Service at 4.9(b) and, unless you choose to terminate it, the Quarterly IT Charge for the Service at 4.9(a). The cost of the Service at 4.9(a) is as follows:

No. of Machines	Charge per Quarter - £	Charge per Year - £
0-5	65	260
5-10	75	300
10-30	125	500
30-50	245	980
51+	325	1,300

4.11. You can end the Service at Clause 4.9(a) without affecting the rest of this contract if you give us at least 3 months' notice which ends on an anniversary date of this contract, and the Quarterly IT Charge will be adjusted accordingly. You cannot end the Service at Clause 4.9(b) because we need this software to provide the other Services.

5. Payment

5.1. Unless it says differently in the Order, our Charges are exclusive of:

- (a) VAT (or equivalent sales tax);
- (b) any packaging and delivery costs which we will charge at our standard rates; and
- (c) any other expenses which we have agreed with you.

5.2. Our Charges are fixed for the first 12 months of this contract. After 12 months, we can increase our Charges by up to 10% in line with increases to the Retail Prices Index, currency exchange rates and/or the raw costs of providing the Services but only if this increase is reasonable and does not happen more than once in any 12 months.

5.3. With regard to the Basic Charge, the Scan Charge, any packaging and delivery costs, and/or any expenses, we will send you invoices monthly in arrears.

5.4. With regard to the Quarterly IT Charge, we will invoice you on a quarterly basis in advance.

5.5. You will pay an invoice in pounds sterling in cleared funds by the end of the month following the date of invoice.

5.6. We would prefer you to pay us by Direct Debit and where you do not, we will charge you an extra 2.5% of the monthly Charges.

6. Warranty

6.1. In relation to Equipment other than "Fiery" controllers, the **Warranty Terms** at Clause 6.3 will apply for 36 months following your Order.

6.2. In relation to a "Fiery" controller:

- (a) for the first 12 months after the Order, it will be covered by a manufacturer's warranty; and
- (b) at the time of the Order, you may decide to purchase a 12,24 or 36 month **Extended Warranty** to cover a period following the expiry of the manufacturer's warranty. The Warranty Terms at Clause 6.3 will apply to any Extended Warranty.

6.3. Subject to Clause 6.4, the Warranty Terms are that:

- (a) for the relevant period of the Warranty, the Equipment will function as described, be of satisfactory quality and free from any major faults; and
- (b) If you tell us within a reasonable time of discovering a fault or we find a fault when maintaining the Equipment, we may choose to either repair or replace the faulty Equipment.

6.4. The Warranty Terms do not apply where:

- (a) you carry on using the Equipment after you have told us of a fault;
- (b) the fault happened because you didn't follow our, or the manufacturer's, instructions for storing, installing, using and maintaining the Equipment; or
- (c) you have purposefully damaged or neglected the Equipment.

7. Liability

7.1. Neither of us excludes or limits our liability where we cannot do so by law. This includes liability for death or personal injury caused by negligence or for fraud.

7.2. Unless we say otherwise in this contract, we exclude (as far as we are able under law) all conditions and warranties that would exist in your favour if it wasn't for this clause.

7.3. Subject to Clause 7.1:

- (a) we will not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any losses that are not a foreseeable result of our breaking this contract; and

- (b) our total liability to you for all other losses in relation to the Services provided and the Equipment supplied under this contract, will be limited to the total Charges paid by you to us in the 6 months before the date on which the claim arose.

8. Termination.

- 8.1. You can end this contract for convenience if, after first having exhausted the dispute resolution procedure set out at Clause 12, you give us at least 3 months' notice in writing which expires at the end of the Initial Term or, after that, any anniversary date of the contract.
- 8.2. We can end this contract for convenience if we give you at least 3 months' notice in writing.
- 8.3. We can end this contract immediately by giving you written notice if:
 - (a) you don't comply with your obligations under this contract;
 - (b) you stop carrying on your business, become insolvent or enter into or are subject to any form of winding up, administration, receivership, liquidation, bankruptcy, arrangement with creditors generally or any other insolvency procedure in respect of you or any of your assets, or suffer from enforcement of security or legal process or repossession or any event analogous to any of the above in the United Kingdom;
 - (c) you don't pay us by the due date for the payment;
 - (d) the average **Volume** (number of pages) over any consecutive 3 month period drops below 60% of the average Volume:
 - i. over the previous 12 months, or
 - ii. where the contract has been in effect for less than 12 months, since the start of the contract; or
 - (e) where, in our reasonable opinion, this contract is no longer profitable.
- 8.4. Without affecting our other rights under this contract, where we end this contract under Clauses 8.3(a) to 8.3(d), you must pay us all Charges due, whether or not the Services have been performed. The Charges for Services not yet performed will be calculated by multiplying the average Charges for the period of six months immediately before the termination of this contract (or, where six months has not passed, the average Charges that would have been payable for the first six months of this contract notwithstanding its earlier termination) by the number of months remaining on this contract Term and applying a 10% discount.
- 8.5. When this contract terminates or expires, you must return to us all unused toner and any other consumables.

9. Data Protection

Commercial Support Services T&Cs

- 9.1. We will both keep to the terms of Schedule 1 (*Data Protection*).
- 9.2. You will select appropriate Equipment to enable you to comply with your obligations under Schedule 1 (*Data Protection*), for example, we would expect you to purchase multifunctional devices with hard disk encryption as standard.
- 9.3. In relation to Equipment that we permanently remove from your premises which holds Personal Data in respect of which you are the Controller:
 - (a) we have your permission to delete all Personal Data from such Equipment; and
 - (b) we may subcontract the deletion of this Personal Data to a third party where that third party is under an obligation to comply with the Data Protection Legislation (as defined in Schedule 1).

10. Confidentiality

- 10.1. Both of us will keep the other's **Confidential Information** confidential including any information related to this contract.
- 10.2. Both of us will not use the other's Confidential Information for any reason other than to perform our obligations under this contract and will ensure that all our officers and employees comply with these confidentiality provisions also.
- 10.3. Clause 10.1 will not apply to any Confidential Information which: (a) is already publically known (except as a result of a breach of this Clause 10); or (b) either of us is required to disclose by law.
- 10.4. The obligations under this Clause 10 will last until 5 years after its expiry or termination.

11. Intellectual Property Rights

This clause is relevant where either party is using or accessing Materials developed or procured by the other.

- 11.1. **Intellectual Property Rights** relate to all patents, trade marks, trade or business names, logos or strap lines, domain names, copyright, moral rights, know-how, rights to prevent passing off or unfair competition, database rights, rights in designs and all other intellectual property rights, in each case whether registered or unregistered and including applications or rights to apply for such rights and all extensions and renewals of such rights.
- 11.2. **Materials** means any party's reports, specifications, business rules or requirements, software, user manuals, training materials and instructions (including any modifications to these).
- 11.3. We will keep ownership of all Intellectual Property Rights in our Materials.
- 11.4. Where you are using our, or third-party Materials, we will grant you, or will procure the grant of, a non-exclusive licence to use such Materials for the purpose of receiving the Services and using the Equipment in your business during

the Term of this contract. We will discuss and agree with you any charges for the relevant licence(s) up front.

12. Dispute Resolution

12.1. Where you have a genuine grievance:

- (a) You will send a letter by post to our Director of the Managed Print Services Division and set out the full details.
- (b) We will respond to you within 14 days of our Director of the Managed Print Services Division having received such letter and we will set out how we intend to resolve the matter. If you haven't heard from us by this time, please telephone the Director of the Managed Print Services Division to make sure that your letter has been received.
- (c) If, within 90 days of the date of our first response to you, both parties, acting reasonably, have failed to reach an agreement on the dispute, either of us may elect (but will not be obliged) to attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.
- (d) If we cannot settle the dispute through mediation, the dispute resolution process will be deemed to have been exhausted in respect of the dispute, and we will both be free to pursue the other rights granted by this contract.

12.2. This clause does not prevent either of us from seeking an injunction where there has been a breach of confidentiality and/or Intellectual Property Rights under this contract.

13. Force Majeure

13.1. We will have no liability to you if we are prevented from, or delayed in, performing our obligations under this contract, or from carrying on our business due to circumstances beyond our reasonable control.

14. Notice

14.1. All notices must be in writing and will be deemed given if delivered in person or sent by email, pre-paid first class post or registered post or by fax to the other party to the address, email address or fax number set out in the Order or such other address, email address or fax number as from time to time notified by the other party.

14.2. Notice will be deemed to have been received 2 working days after posting or, if given by hand or fax, at the time of delivery or transmission or, if sent by email, on acknowledgement.

14.3. This Clause 14 does not apply to the service of any legal proceedings.

15. Contract Management

15.1. We will meet together no less than once a year to discuss in good faith any changes to be made under this contract.

16. Variation

16.1. We may make minor changes to the Services and these terms:

- (a) to reflect developments in relevant laws and regulatory requirements; and/or
- (b) to implement minor technical adjustments and improvements which will not affect your enjoyment of the Services.

16.2. Any changes to the Term must be signed off by our IT Services' Director:

17. General

17.1. **No partnership or agency.** We are independent of each other and are not partners, principal and agent or employer and employee.

17.2. **Severance.** Each of the clauses of this contract operates separately. If a court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

17.3. **Waiver.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, it will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

17.4. **Rights of third parties.** This contract is between you and us. No other person shall have any rights to enforce any of its terms.

17.5. **Entire agreement.** We agree that this contract is the entire agreement between us and supersedes all previous agreements, understandings and arrangements between us, whether in writing or oral, in respect of its subject matter.

17.6. **Governing law and jurisdiction.** Any claims or disputes under this contract will be governed and interpreted in accordance with the law of England and Wales. Both parties submit to the exclusive jurisdiction of the English Court.

SCHEDULE 1 – DATA PROTECTION

- 1.1 The following definitions apply in this Schedule 1:
- (a) **Access Requests:** requests made by a Data Subject to exercise any rights the Data Protection Legislation in relation to Personal Data.
 - (b) **Appropriate Safeguards:** such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under the Data Protection Legislation.
 - (c) **Controller:** has the meaning given to that term (or the term 'data controller') in the Data Protection Legislation.
 - (d) **Data Breach:** any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data.
 - (e) **Data Protection Legislation:** means the Data Protection Act 1998 and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of Personal Data, including the General Data Protection Regulation (EU) 2016/679 (GDPR) on and from the GDPR Date, together with all legally binding guidance and codes of practice issued by a regulator with jurisdiction over the data processing arrangements contemplated in this Contract.
 - (f) **Data Subject:** an identified or identifiable natural person.
 - (g) **GDPR Date:** 25 May 2018 (or such other date on which the General Data Protection Regulation first has binding legal effect in the United Kingdom).
 - (h) **Personal Data:** any information relating to a Data Subject received by us from or on behalf of you in connection with the performance of our obligations under this contract.
 - (i) **Processor:** has the meaning given to that term (or the term 'data processor') in the Data Protection Legislation.
 - (j) **Sub-Processor:** another Processor engaged by Commercial for carrying out processing activities in respect of Personal Data your behalf.
- 2.1 **Schedule 1 will survive** termination or expiry of this contract and continue:
- (a) indefinitely in the case of paragraphs 1.1, 1.1(j), 14.1 and **Error! Reference source not found.**; and
 - (b) for all other paragraphs, for 12 months.
- 3.1 **We both agree** that, to the extent we process Personal Data on your behalf in the provision of the Services, you will act as the Controller and we will act as the Processor.
- 4.1 **We will process** the Personal Data:
- (a) in compliance with the obligation of Processors under the Data Protection Legislation; and
 - (b) in accordance with the contract terms.
- 5.1 **You warrant** that you will comply with all Data Protection Legislation in respect of:
- (a) the processing of Personal Data and the exercise and performance of your rights and obligations under this contract;
 - (b) all Personal Data to be provided to us in connection with the Services;
 - (c) all instructions given by you to us in respect of the Personal Data; and
 - (d) your processing operations, expertise, reliability and the resources required by you to implement suitable and sufficient technical and organisational measures to enable you to meet the requirements of the Data Protection Legislation.
- 6.1 **Where we processes Personal Data** on your behalf, we will:
- (a) only process the Personal Data to the extent necessary in accordance with your documented instructions (unless required to do otherwise by the Data Protection Legislation);
 - (b) immediately notify you in writing if, in our opinion:
 - i. our compliance with paragraph 1.6(a) would breach a requirement of applicable law (including Data Protection Legislation), or
 - ii. an instruction from you breaches a requirement of applicable law (including Data Protection Legislation);
 - (c) take such reasonable steps as are requested by you to enable the you to comply with your obligations under Data protection Legislation, including by providing (at your request) such assistance to you as is contemplated by Article 28(3)(e) and (f) (Processor) of the GDPR on and from the date the GDPR applies;
 - (d) implement and maintain all appropriate technical and organisational measures to:
 - i. ensure the security, integrity, availability and confidentiality of the Personal Data; and
 - ii. prevent the unauthorised or unlawful processing of the Personal Data (including accidental loss, damage or destruction of the Personal Data).
- 7.1 **Our processing of Personal Data** will consist of:
- (a) the deletion of Personal Data from the Equipment on replacement or at the end of the contract, and Personal Data used for co-ordinating the Services, monitoring Equipment usage and reporting purposes;
 - (b) which will be processed for the duration of this contract; and
 - (c) for the purpose of supplying support services under this contract.
- 8.1 **We will:**
- (a) not engage any Sub-Processor for carrying out any processing of Personal Data without your authorisation;
 - (b) appoint Sub-Processors only under a written contract containing materially the same obligations as in this Schedule 1; and
 - (c) as from the GDPR Date, ensure that all our personnel authorised to process Personal Data are subject to binding written contractual obligations to keep the Personal data confidentiality (except where disclosure is required in accordance with the Data Protection Legislation).
- 9.1 **We will refer all Access Requests** we receive to you without undue delay.
- 10.1 **As from the GDPR Date**, we will provide such reasonable assistance as you reasonably require (taking into account the nature of processing and the information available to us) to you in ensuring compliance with your under Data Protection Legislation with respect to:
- (a) security of processing;
 - (b) data protection impact assessments;

- (c) prior consultation with a supervisory authority regarding high-risk processing; and
- (d) notification to the supervisory authority and/or communications to Data Subjects by you in response to a Data Breach;

provided you will pay us for providing the assistance on a time and materials basis in accordance with our then-current standard hourly rates.

11.1 We agree not to transfer Personal Data to any country or recipient outside the United Kingdom.

12.1 We will, in accordance with Data Protection Legislation:

- (a) maintain written records of all categories of processing activities carried out on behalf of you; and
- (b) make available to you such information as is reasonably necessary to show our compliance with the obligations of Processors under Data Protection Legislation, and allow for and contribute to audits, including inspections, by you for this purpose, subject to you:
 - i. giving us reasonable prior notice of such information request, audit and/or inspection;
 - ii. ensuring that all information obtained or generated by you in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure required by applicable laws);
 - iii. ensuring that such audit or inspection is undertaken during our normal business hours with minimal disruption to our, or any Sub-Processor's, business; and
 - iv. paying us for assisting with the provision of information and allowing for and contributing to inspections and audits on a time and materials basis in accordance with our then-current standard hourly rates.

13.1 In respect of any Data Breach involving Personal Data, we will promptly notify you, and provide you with details, of the Data Breach.

14.1 We will, at your written request, either delete or return all the Personal Data to you in such form as you reasonably request within a reasonable time after the earlier of:

- (a) the end of the performance of the relevant Services; or
- (b) once processing by us of any Personal Data is no longer required for the purposes of this contract,

and we will delete existing copies (unless storage of any data is required by applicable laws, or unless we are a Controller in relation to that data at the relevant time).