

Maintenance Agreement – Hardware & Software Support

Maintenance Contract: Contract No: ****

Dated: *****

BETWEEN

SYNERGY TECHNOLOGY LTD of Pembroke House, Manchester Road, Carrington, Manchester M31 4DD ('ST')

AND

CLIENTS NAME

Clients address ('The Customer')

Site address: As above

Equipment Description:

As to Make; Model; Quantity; Serial nos. and other relevant details are all described and set out in the First Schedule hereto

Note: Items marked '*' are excluded from Maintenance Services

The Maintenance Services shall consist of such services as are detailed in the Second Schedule hereto

Maintenance Charges payable monthly in advance by standing order or yearly in advance by single payment at the Customer's option

Annual charge

Annual Charge: £****

Vat: £****

Total: £****

Commencement Date: *****

THE SECOND SCHEDULE

DEFINITIONS

1. In this Agreement the following terms shall have the following meanings:

'Equipment'

means the equipment or hardware previously described and defined in the First Schedule.

'Software'

means the equipment or software previously described and defined in the First Schedule.

'Maintenance Services'

means the services described in the First Schedule

MAINTENANCE SERVICES

1. ST will provide the Customer with Maintenance Services in respect of the Equipment and Software on the following terms and conditions which shall constitute the entire maintenance contract between ST and the Customer.

2.2 As to the equipment the service will consist of preventive and corrective maintenance to the Equipment in respect of fair wear and tear or faulty materials or workmanship and includes all necessary repairs and the supply and fitting of replacement parts to the Equipment. All defective parts removed by ST under this Agreement will become the property of ST and the replacements will become the property of the Customer.

2.3 As to the Software the service will consist of telephone and remote support only. ST will advise and guide, however not provide training. ST will also provide general system help and maintenance i.e. advice on best practices, notification of updates and remote installation of updates. Given the Customer has a valid licence ST can provide and apply software service packs and patches from the vendor using remote access.

2.4 ST will provide the service together with telephone and remote assistance (remote where available) between 09.00 – 17.30 hours Monday to Friday, excluding Bank Holidays and Public Holidays. Cover will be provided for the working days between Christmas and New Year. Any additional cover outside of this period will be subject to additional charges as referred to in paragraph 2.6 below.

2.5 ST will endeavour to respond promptly within 8 working hours to requests for Maintenance Services.

2.6 ST will use its reasonable endeavours to provide support outside the hours set out in clause 2.2 above provided the Customer gives ST reasonable notice. The provision of these additional support services will be subject to additional charges which will be charged in accordance with the standard scales and terms of ST then in force and which will be provided to the Customer on request.

2.7 If, in the opinion of ST, reconditioning of the Equipment or hardware is deemed necessary ST will provide the Customer with their reasons for such reconditioning work and the additional charges that would be incurred in effecting such recondition. If the Customer neglects, declines or refuses to have the Equipment reconditioned then all further liability under this Agreement for the maintenance of the item or items concerned on the part of ST will cease forthwith whereupon the Customer will be entitled (subject to any monies

outstanding under the Agreement) to an appropriate refund of apportioned maintenance charges paid in advance subject to any costs (howsoever arising) due and payable to ST at the material time. In the event that ST will be entitled to treat the Agreement as terminated then the Customer will be entitled (subject to any monies outstanding under the Agreement and costs due to ST) to an appropriate refund of maintenance charges paid in advance.

2.8 ST may at its discretion provide a service visit during the term of the Agreement for the purposes of carrying out such preventative maintenance which ST in their own opinion consider to be necessary for the proper maintenance of the Equipment under the terms of this Agreement. If ST consider that preventative maintenance work is required then they will obtain the Customers authorisation for such work and will agree the cost thereof before taking any further action.

EXCLUSION FROM SERVICES

3 The Maintenance Services will not extend to:

- modifications or additions to the Equipment, unless specified in the Schedule;
- electrical work external to hardware;
- peripheral items and consumables;
- refurbishment or repair of hardware casing;
- adding or removing accessories, attachments or other devices;
- work requested by the Customer for re-arrangement including without limitation providing additional wiring, moving cabling, relocating the Equipment or repairing a previously prepared site to make it operational;
- the provision of consumable items, including printheads and other such items whose serviceable lives are defined by the original manufacturer of the Equipment by reference to the volume or amount of usage of the Equipment (e.g. Laser Printer Engines)
- peripheral items and consumables (lists of which are available from ST);
- items which in the opinion of ST can no longer be subject to economical maintenance (or in the case of software that which is not updated) and for which ST has submitted a refurbishment cost estimate payable in addition to the Maintenance Charges unless work is authorised within 30 days of the date of the estimate. For the purposes of ensuring the Equipment is suitable for the purposes of this Agreement ST reserves the right at any time either prior to or during the subsistence of the Agreement to carry out an inspection and test of the Equipment so as to determine its working condition and identify any problems. Any problems found which the Customer fails to rectify will entitle ST to refuse to maintain the Equipment (or any part of such Equipment);
- defects resulting, in the reasonable opinion of ST, from misuse or neglect of or accident to the Equipment or failure to follow the instructions or advice of ST or the Equipment manufacturer;
- visits in addition to those (if any) specified herein;
- the repair or replacement of parts which ST requires to carry out away from the site named overleaf but which the Customer for security reasons or otherwise is unwilling to release to ST;
- Equipment used by the Customer more regularly than the normal working week (e.g. where there is regular overtime or additional shifts) unless such additional use is notified to ST who then agree in writing to include such use within the

Maintenance Service at such additional cost as is agreed between ST and the Customer;

- Software used by the Customer more regularly than the normal working week (e.g. where there is regular overtime or additional shifts) unless such additional use is notified to ST who then agree in writing to include such use within the Maintenance Service at such additional cost as is agreed between ST and the Customer.
- the failure or incompatibility due to quality or otherwise of equipment or hardware provided on behalf of a third party including manufacturing and design faults. In the event of problems occurring in equipment or hardware supplied through ST on behalf of a third party, ST agrees to make full representation on behalf of the Customer to the third party to rectify any problems but this **DOES NOT** include Year 2000 compliance problems;
- the supply and installation of consumable media or any other operating and maintenance supplies.

MAINTENANCE CHARGES

4.1 Maintenance Charges are payable annually in advance on or before the Commencement Date overleaf and each anniversary of it, unless monthly payment has been agreed between both parties.

4.2 Additional services (including emergency visits outside the hours specified in condition 2.2) and the cost of replacement parts not covered by a parts warranty given by ST will be the subject of extra charges in accordance with the terms and conditions of ST then in force payable in 30 days of the date of invoice.

4.3 ST may:

- adjust its Maintenance Charges by written notice not later than 30 days before any anniversary of the Commencement Date; and
- if the Customer does not pay the adjusted Maintenance Charges on the due date terminate the contract immediately and without notice.

4.4 The charges of ST are payable without any deductions or withholding of any kind but with the addition of VAT.

CUSTOMER OBLIGATIONS

5 To facilitate the provision by ST of Maintenance Services the Customer shall:

- keep and operate the Equipment running the Software in a proper and prudent manner (including the appropriate back-up and restore procedures) and ensure that only competent trained employees are allowed to operate it;
- use the Equipment in a suitable environment with proper power supplies and in accordance with instructions and advice of the Equipment manufacturer and ITS;
- not move the Equipment and/or Software or make any addition, modification or adjustment to it without the prior written consent of ST;
- maintain and make available to ST records of the operation, maintenance and any malfunction of the Equipment;

- provide at such times as ST reasonably requires and at no cost to ST all documentation, software, materials and services necessary for the maintenance and testing of the Equipment, access to the Equipment, use of the Customer's workshop and repair facilities and the co-operation of the Customer's personnel in diagnosing and overcoming any malfunction of the Equipment and/or Software.

LIABILITY

6.1 ST shall use its reasonable endeavours to keep the Equipment in efficient operating condition under the terms and extent of this Agreement but shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned. It is understood by the Customer that additional charges will be made for rectifying problems occurring from accident, transportation, neglect or misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, telephone line failure or foreign interconnecting equipment, operator error or causes arising other than as a result of normal use.

6.2 ST shall have no liability for any damage to the Customer's property unless occasioned by the negligence of ST.

6.3 ST shall not be liable for any loss of data on any hard disk drive or any other recording device. The Customer is fully responsible for re-installation of all software programmes and data after any hard disk drive replacement unless covered by a hardware maintenance agreement with ST for the faulty part. ST will, on request, re-install software programmes or data at additional charges.

6.4 The Customer shall use magnetic media or similar consumables that have been supplied or approved by the equipment manufacturer or ST as suitable for the Equipment and failure to comply with this requirement will render ST non-labile and entitle ST to make additional charges to cover the costs of any additional maintenance necessitated.

6.5 As part of ST's ongoing preventative and corrective maintenance policy, any required upgrade or repair must be tested for stability. ST therefore reserves the right not to issue upgrades and repairs which may prove to be potentially detrimental until fully tested. Upon request ST will send the Customer written notification giving their reasons for such refusal.

SOFTWARE OWNERSHIP

7.1 The Customer owns the right to use the specified software as ownership of the said software is unattainable and remains with the manufacturer.

7.2 Should ST decide to no longer support modifications or the Opera product range, ST would then undertake to supply the Customer with the source code and the legal transfer of intellectual property rights. Any costs associated with this transfer will be notified prior to the event.

FORCE MAJEURE

8. If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it, the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost despatch whenever such causes are removed or diminished.

COMMENCEMENT AND TERM OF AGREEMENT

- 9** This Agreement starts on the date hereof and remains in force until it is terminated on any anniversary of the Commencement Date by not less than one month's prior written notice by either party to the other.

TERMINATION ON DEFAULT ETC

10.0 Either party may at any time by written notice (in addition to any other rights) terminate this Agreement or suspend their performance of all or any of their obligations under it immediately and without liability for compensation or damages if:

10.1 the other party fails to comply in all material respects with this Agreement;

10.2 either party dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt;

10.3 either party convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of ST) for the purposes of and followed by amalgamation or reconstruction;

10.4 a receiver or administrative receiver is appointed of any of the Customer's property;

NOT ASSIGNABLE

11 This Agreement is personal to the Customer who may not without the prior written consent of ST:

- assign or dispose of it;
- part with any interest in it; or
- grant any lease or licence or delegate any of the rights conferred by it.

VARIATION

12 Except as expressly provided for in this Agreement no variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

NOTICES

13.1 Any notice given under this deed shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail;
- by facsimile transmission (confirmed by post); or
- by any other means which any party specifies by notice to the others.

13.2 Each party's address for the service of notice shall be the above mentioned address or such other address as is specified by notice to the others.

13.3 A notice shall be deemed to have been served:

- if it was served in person, at the time of service;

- if it was served by post, 48 hours after it was posted; and
- if it was served by facsimile transmission, at the time of transmission.

GENERAL

14 This Agreement shall not be binding on ST until it has been accepted and signed by ST.

15 The Customer shall keep the Equipment in good condition and maintained in accordance with the manufacturer's recommendations.

16.1 On breach of any provision of this Agreement by the Customer, ST shall be entitled without prejudice to its accrued rights to terminate this Agreement without notice and repossess such property or equipment to which it has title.

16.2 The foregoing terms shall form the entire maintenance agreement between ST and the Customer and shall not be varied by the terms and conditions of any order submitted by the Customer for the repair and maintenance of the equipment.

16.3 This Agreement shall be governed and construed according to the Laws of England and Wales to the non-exclusive jurisdiction of whose Courts the parties hereby agree to submit.

This Agreement has been entered into on the date stated at the beginning of it;

Signed by
For and on behalf of SYNERGY TECHNOLOGY LTD

Signed by
For and on behalf of CLIENTS NAME