

NIMOVERI LTD GENERAL TERMS AND CONDITIONS

DEFINITIONS

In these conditions the following words shall have the following meanings ascribed to them:

"Agreement" means these terms and conditions;

"Variation" means any alteration, amendment or addition to this agreement and must be scheduled hereto together with the front sheet signed by the Customer and the Supplier;

"Commencement Date" means the date of this Agreement;

"Consumable" means items that are consumed during the normal operation of the Equipment;

"Cover Period" means the hours of cover specified in the Service Order Form;

"Customer" means the person, company, or other entity identified within the relevant Service Order Form;

"Customer Data" – the data inputted by the Customer by means of any Equipment and data generated from it, in any case as stored and processed by means of the Services;

"Equipment" means the equipment listed in the Installed Assets Schedule where referring to customers equipment to be included for the purpose of remedial maintenance or in the Supplier's quotation, delivery notes or invoices when referring to equipment supplied by the Supplier to the Customer;

"Minimum Term of Service" means the period starting with the Commencement Date for which a fixed charge has been agreed as specified on the Managed Service Agreement;

"Service Order Form" - the Service Order Form (and any schedules to the Service Order Form) completed by the Customer and the Supplier which sets out details which include (i) the Equipment and / or Services to be supplied to or utilised by the Customer pursuant to the relevant Contract, and (ii) the Charges;

"Product" means any service, product, item of equipment, hardware, software, microchip, semiconductor (or other item containing, using or dependent upon any of the foregoing) supplied by the Supplier under this Agreement including, in the case of the Service, any hardware or software provided to the Customer by the Supplier as part of such Service or used by the Supplier as part of such Service;

"Recurring Charges" - any element of the Charges which is payable periodically (e.g. weekly or monthly) as set out in the Service Order Form;

"Reactive Maintenance" means rectification of a hardware failure to restore the Equipment to the configuration and functionality which existed prior to the failure and to the point of passing the Supplier's diagnostic testing applicable to that Equipment;

"Standard Working Hours" means the hours between 8.00am & 6.00pm Monday to Friday, excluding English Public Holidays;

"Services" - the Services being provided by the Supplier to the Customer as specified in the Service Order Form as such Services may be modified from time to time in accordance with the Contract, and "Service" shall mean an element of the Services;

"Supplier" means Nimoveri Ltd

THE SERVICE

- 1.1 The Service shall commence on the Commencement Date and can be broken down into the following categories:
- 1.1.1 Reactive Maintenance. In this category work is generated by a problem or fault on the network and is characterised by being unplanned and ad-hoc. In this sense there is an accidental and unexpected change to the systems equilibrium and it is this change that is the impetus for work.
- 1.1.2 Proactive Support. This includes monitoring and routine upgrades, network changes and enhancements and covers work that results from a need or desire to deliberately change the network in an attempt to improve it, expand it, make it more useable, secure, efficient etc. This category is still clearly IT support but is in contrast to category (1.1.1) because the work is generated not in response to, but rather in order to, affect a system change. Category (1.1.2) can then be split into two sub-categories:
- 1.1.2.1 Work that can be delivered remotely without requiring an onsite visit. This would include day-to-day administration such as remote installation of new, pre-configured PC's, hardware and software, creating new user accounts or changing account details and work of a less routine nature such as network security audits.
- 1.1.2.2 Work that requires an on-site visit such as physical installation of new infrastructure, network cabling etc.
- 1.2 The Supplier shall respond to valid service requests during the Standard Working Hours or such other hours of cover as may be stated in the Service Service Order Form.
- 1.3 The Supplier will make all reasonable endeavours to ensure the visit of an engineer to the Customer's site within the contracted response time as detailed in the Service Order Form.
- 1.4 All parts other than Consumables used in the repair of Equipment shall be provided by the Supplier at the Customers cost. Defective parts removed during the course of a repair remain the property of the Customer unless otherwise agreed with the Supplier. Replacement parts become the property of the Customer.
- 1.5 Not Used.
- 1.6 Not Used.
- 1.7 Personnel required under this Agreement will be provided by the Supplier and will be either from its own engineering staff or a competent sub-contractor.

AMENDMENTS AND ADDITIONAL SERVICES

- 2.1 The Supplier is entitled to change these Conditions from time to time. The Supplier will give the Customer at least sixty (60) days' notice of any such change, which shall take effect at the end of such sixty (60) day period.
- 2.2 Where the Supplier has given the Customer notice of a change to the Conditions in accordance with Clause 4.1 and such changes will have a material adverse effect on the Customer, the Customer shall be entitled to terminate the Contract by giving the Supplier not less than thirty (30) days' prior notice in writing to that effect, such notice to expire before the expiry of the 60 day notice period referred to in Clause 4.1.
- 2.3 The Supplier may at its discretion also provide from time to time additional services beyond the scope of the Services being provided to the Customer as at the Commencement Date, subject to prior written agreement between the parties. The pricing for such additional services will be set out and agreed in writing by the parties.

CUSTOMER'S RESPONSIBILITIES

- 3.1 The Customer shall provide, at no charge to the Supplier, full and free access to the Equipment as necessary to provide the Service. If, on arrival at the Customer's site, the Supplier's engineer finds that sufficient and proper access to the Equipment is not provided or that the call was not warranted, the Supplier may exercise the right not to perform the Service and to charge the Customer for the Supplier's costs and expenses reasonably incurred.
- 3.2 The Customer shall take all reasonable precautions to protect the health and safety of the Supplier's personnel whilst on the Customer's site, including ensuring the presence of a Customer representative in the vicinity of the faulty Equipment during the service visit.
- 3.3 The Customer shall be solely responsible for all software but without prejudice to the generality of the foregoing shall also be responsible for ensuring adequate fully serviceable backup copies of its operating system and application software are kept.

ADDITIONAL EQUIPMENT

- 4.1 With the agreement of both parties, additional equipment may be included in the Installed Assets Schedule from time to time, the charges for such additional equipment being added to the Suppliers billing system on the date we are informed and incorporated in the total charge thereafter. The Supplier may choose to waive this 'right to charge' until the contract anniversary date, if reasonable to do so.
- 4.2 A revised schedule showing such additions may be provided by the Supplier detailing any price increase.

REFURBISHMENT/MAJOR OVERHAUL

- 5.1 If in the opinion of the Supplier, a particular piece of Equipment can no longer be properly maintained due to warranty expiry, wear or deterioration caused by excessive usage or unsuitable operating environment or for any other reason, the Supplier may withdraw the Service in respect of said item of Equipment. If it is deemed that the Equipment concerned can be refurbished, then either the Supplier may refurbish it or its approved agents or sub-contractors provided that the Customer agrees to accept all resulting charges, reasonably and properly incurred.

CHARGES AND TERMS OF PAYMENT

- 6.1 The Customer will pay the Charges as follows:
- 6.1.1 the Supplier will invoice the Customer in advance for the Charges for the Services at the frequency specified in the Service Order Form, and the Customer will pay the full amount of each invoice in accordance with Clause 6.3;
- 6.1.2 non-Recurring Charges (such as the Initial Charges, infrastructure costs, migration costs, integration costs, provisioning costs, paid for support requests or other related Charges) will be payable on the earlier of (1) 30 days from the Commencement Date; (2) full delivery of the Equipment and/or Services set out in the Service Order Form; or (3) the terms of a milestone delivery and payment plan in a format to be agreed between the Parties and attached to the Service Order Form, by electronic payment to the Supplier's nominated bank account.
- 6.1.3 all Recurring Charges, will be paid either by direct debit or otherwise as stated in the Service Order Form, in either case with the frequency and on the date or dates referred to in the Service Order Form, to the Supplier's nominated bank account, details of which will be included in the Direct Debit Instruction or otherwise as stated in the Service Order Form;
- 6.1.4 in the event that part of the Services are delivered to the Customer, then the Supplier is entitled to invoice such Charges in respect of such part of the Services as and when those Services are made live (for example, if multi-line WAN projects, these will be invoiced as each circuit goes live); or
- 6.1.5 if otherwise agreed in writing by the parties in writing, by any other means of payment acceptable to the Supplier from time to time.
- 6.2 The Customer shall pay all amounts in full within twenty-eight (28) days of the date of the Supplier's invoice unless otherwise previously agreed in writing.
- 6.3 All payments by the Customer shall be made in pounds sterling (£) and without deduction or set off of any amount.
- 6.4 Any sum payable under the Contract is exclusive of VAT which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid VAT invoice.
- 6.5 If any sum payable under the Contract is not paid on or before the due date for payment the Supplier will be entitled to charge the Customer interest on that sum at the rate of four percent (4%) per annum above the base lending rate from time to time of The Royal Bank of Scotland plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 6.6 The Customer will reimburse all reasonable costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount.
- 6.7 When referring to network services (including SDSL, EFM, MPLS, Leased Lines, IP Transit and MetroEthernet), the Charges quoted by the Supplier are subject to site survey and may vary according to local conditions not known to the Supplier at the time of contracting. Should the Charges be subject to material variation after a site survey, the provisioning process will be put on hold, and the Customer has the right to either agree to the variation in Charges, or terminate the relevant Contract in writing. The Customer shall reimburse the Supplier for any site survey costs reasonably and properly incurred should the Customer terminate the relevant Contract during the provisioning process.
- 6.8 The Supplier shall at its option be entitled to increase the Charges in respect of:
- 6.8.1 any increase in the Consumer Price Index, as published by the National Office for Statistics, whereby the Charges may be increased by the same percentage as the increase in the Consumer Price Index; and
- 6.8.2 any increase in price by a third party software or licence provider which is used solely for the provision of the Services;

- 6.8.3 provided that in any case the Supplier has notified the Customer no less than sixty (60) days in advance of such increase unless (in the case of software provider costs increases) the Supplier itself has received less than sixty (60) days advance notice, in which case the Supplier shall give as much notice as it is reasonably able.
- 6.9 The Charges specified on the Service Order Form are exclusive of, and may be increased as a result of, the imposition by any relevant authority of any tax, impost, duty, levy, charge or any measure of equivalent effect to any of the foregoing including but not limited to any 'green levy' such as the carbon reduction commitment and the climate change levy, import/export duties or shipping and delivery charges. For the avoidance of doubt, only the actual amount of such increase will be passed on to the Customer.
- 6.10 The Customer shall be entitled at any time by notice in writing to request a change to the Services. Agreement to such requests shall be at the Supplier's sole discretion. If acceptable in principle, the Supplier will determine whether this change request is chargeable and upon receipt of such a change request, provide the Customer with the appropriate rate card for the implementation of the change. The Supplier will only action any change request upon written agreement as to the amount of any additional charges payable.
- 6.11 If the Supplier, during the investigation and diagnosis of any issue related to the delivery and provision of the Services, determines in its reasonable opinion that the issue is caused by the Customer or related to a solution and/or service not included under the Supplier's contracted support services or attributable otherwise than to the Supplier, then the Supplier reserves the right to stop working on the issue until the Customer has agreed to additional charges payable relating to any associated engineering time or other costs, unless otherwise agreed in writing by both parties.

TERM OF AGREEMENT

- 7.1 After the initial 12 months Minimum Term of Service this Agreement shall continue in effect from year to year thereafter until terminated by either party on 90 days written notice expiring on the anniversary of the contract start date.

CONFIDENTIALITY

- 8.1 Each party (hereafter called the "Receiving Party") undertakes to keep and maintain all Confidential Information (which term shall include all information marked or notified to the Receiving Party as confidential or proprietary together with all information which would in the normal course of business be regarded as confidential or proprietary) in the strictest confidence and not to disclose such information to any third party without the prior written consent of the other.
- 8.2 Each party shall ensure that its employees and sub-contractors:-
- 8.2.1 Shall only be given access to Confidential Information received from the other party on a "need to know" basis for the purposes of this Agreement;
- 8.2.2 Shall have been made aware of the requirements of confidentiality set out in this Agreement;
- 8.2.3 Shall not cause or permit the Confidential Information to be disclosed to any third party.
- 8.3 The provisions of this clause 8 shall not prevent either party from disclosing any information where it can demonstrate and document that such information:-
- 8.3.1 Was in its possession (with full right to disclose) prior to receiving it from the other party; or
- 8.3.2 Is independently developed or received by it from a third party; or
- 8.3.3 Is or subsequently comes into the public domain other than by breach of this Agreement.
- 8.4 The provisions of this clause 8 shall apply throughout the full course of this Agreement and for five years thereafter.

DATA PROTECTION

- 9.1 Each party undertakes to the other that it will take all necessary steps to ensure that it operates at all times in accordance with the DPA and General Data Protection Regulation ("GDPR") on the basis that the Customer is the Data Controller and (where the Supplier processes Personal Data but not otherwise) the Supplier is the Data Processor in relation to Personal Data.
- 9.2 Without limiting Clause 9.1, if either party (the "Data Provider") passes to the other party (the "Data Recipient"), or otherwise gives the Data Recipient access to, Personal Data under these Conditions:
- 9.2.1 the Data Recipient will not Process Personal Data under the Contract except in accordance with the Contract or otherwise on the instructions of the Data Provider;

- 9.2.2 the Data Recipient will implement appropriate technical, security and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in compliance with the DPA and GDPR;
 - 9.2.3 the Data Recipient will only Process such Personal Data in accordance with the data protection principles set out in the DPA and GDPR;
 - 9.2.4 the Data Recipient will comply promptly and in full with any request made by the Data Provider further to the Data Provider's statutory obligations pursuant to the DPA and GDPR;
 - 9.2.5 the Data Provider represents, warrants and undertakes that it has all necessary consents and permissions in relation to the Personal Data concerned; and
 - 9.2.6 Where the Supplier is the Data Recipient, the Data Recipient will not transfer any of the Personal Data concerned outside the UK and/or the EEA without the prior written consent of the Customer (as Data Provider).
- 9.3 For the purposes of this Clause 9, "Data Controller", "Data Processor", "Personal Data" and "Process" bear the meanings given to them within the DPA and GDPR.

LIABILITY

- 10.1 Neither party shall be liable for failure to perform its contractual obligations, other than an obligation to make payment, if such failure results from Act of God, governmental act, fire, explosion, accident, industrial dispute, or any other cause beyond the party's control.
- 10.2 The Supplier indemnifies the Customer in respect of:-
 - 10.2.1 Direct physical damage to the Customer's property, which is established to be the result of negligence by the Supplier or its servants or agents while on the Customer's premises for the purpose of this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier's liability for direct damage to property other than the Equipment is limited to £100,000 in respect of any event or series of related events.
 - 10.2.2 Direct physical injury or death of any person resulting from the negligence of the Supplier or its servants or agents.
- 10.3 The Customer indemnifies the Supplier in respect of: -
 - 10.3.1 Direct physical damage to the Supplier's property that can be established to be the result of negligence by the Customer or its servants and agents. The Customer's liability for direct physical damage is limited to £1,000,000 in respect of any one event or series of related events.
 - 10.3.2 Direct physical injury to, or death of any person resulting from the negligence of the Customer or its servants or agents.
- 10.4 In view of the disproportion between the acts or omissions likely to constitute breach or negligence on its part and the consequences for the Customer, the Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for: -
 - 10.4.1 Destruction of or damage to the Customer's data. (The Customer must keep a copy of all data from which it shall exclude the Supplier notwithstanding any requests made by its employees or agents);
 - 10.4.2 Any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect or consequential losses whatsoever.

EMPLOYEES

- 11.1 Without the prior consent in writing of the other, neither party shall during the term of this Agreement or for six months thereafter solicit, procure, or attempt to procure the employment of any persons employed in the provision of the Service. The Customer will extend this provision to its own customers, where the Supplier is undertaking work on behalf of the Customer for a third party.
- 11.2 Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances shall the relationship of employer and employee be deemed to arise between either party and any employee of the other.

WHOLE AGREEMENT

- 12.1 This Agreement represents the entire agreement between the parties. Each party warrants that no representation not recorded in this Agreement has been made which has induced the other to enter into this Agreement.

ASSIGNMENT

- 13.1 Neither party shall assign this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed).

NOTICES

- 14.1 Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, email or fax, or registered mail postage. Notices sent by first class post shall be sent to the address of the party set out on the front sheet or to such other address notified in writing by that party to the other for such purposes.

SEVERABILITY

- 15.1 The various provisions of this Agreement are severable and if any provision is held to be invalid or unenforceable by any court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of any of the other provisions unless the result goes to the root of this Agreement or radically affects it

RIGHT OF TERMINATION

- 16.1 If, at any time either party makes default or commits any breach of its obligations under this Agreement and (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 14 days, or is involved with any legal proceedings concerning its solvency, or commences liquidation or ceases to threaten to cease trading, or if serious doubt arises as to its solvency, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this contract forthwith by notice in writing to the other.
- 16.2 Upon termination of this Agreement by the Supplier for whatever reason the Supplier shall, without prejudice to its other rights and remedies, be paid:-
- 16.2.1 the outstanding balance of charges due in respect of any works or services carried out or provided under this Agreement prior to the date of termination and:
- 16.2.2 the price of equipment or services ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.
- 16.3 Termination of this Agreement for whatever reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.
- 16.4 Notwithstanding anything else contained herein, this Agreement may be terminated by the Supplier in respect of any of the Equipment forthwith on giving notice in writing to the Customer if said item of Equipment shall become obsolete or if the Supplier is no longer able to obtain spare or replacement parts or other necessary support on commercially reasonable terms. In this event a pro rata refund of the pre-paid maintenance charge shall be made.

LAW AND JURISDICTION

- 17.1 This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the jurisdiction of the English Courts.

SERVICE LEVEL OBJECTIVES

18.1 The Supplier will use its reasonable endeavours to deliver the following Response Times in respect of incidents as set out in the table below. Supplier will use best endeavours to meet the Attempted Resolution Time in the table below but cannot guarantee resolution will be within the stated time.

Event Type	Service Hours	Response Time	Attempted Resolution Time
Critical	Monday–Friday, 8am–6pm (Issue must be notified by telephone)	Within 30 minutes	2 hours
High	Monday–Friday, 8am–6pm (Issue must be notified by telephone)	Within 30 minutes	4 hours
Medium	Monday–Friday, 8am–6pm (Issue must be notified by telephone)	Within 30 minutes	8 hours
Low	Monday–Friday, 8am–6pm (Issue must be notified by telephone)	Within 30 minutes	24 hours
Service Request	Monday–Friday, 8am–6pm (Issue must be notified by telephone)	Within 30 minutes	24 hours