

Terms and Conditions of Service

Bill Fletcher agrees to provide the Customer, and the Customer agrees to acquire, at the Site, the Service identified in the attached Schedules. All services will be provided strictly in accordance with these Terms and Conditions as follows:

1. Definitions

1.1 In the Agreement the following expressions shall have the following meanings:-

- (i) **"Company"** means Bill Fletcher.
- (ii) **"Equipment"** means any and all of the items specified in Schedules A and B.
- (iii) **"Site"** means the address at which the Equipment or services is located.
- (iv) **"Service Class"** is a classification into one of the three categories, Business, Extended Business or Premium, defined by the Principal Period of Maintenance.
- (v) **"Principal Period of Service"** means the defined times during which the Company shall supply Service to the Site.
- (vi) **"Response Time"** means the time the Company will respond by R.D.A. or attending Site, where necessary, within 25 kilometres of the nearest service centre. For sites beyond this, the response time is increased by 1 hour for each additional 60 kilometres or part thereof;

2. Term of the Agreement

- 2.1 This Agreement binds the parties for the duration of the Agreement Term, as specified in Schedule A.
- 2.2 At the expiration of the Agreement Term, this Agreement will continue subject to the terms and conditions contained herein for further successive terms of 12 month intervals until terminated by either party notifying the other in writing 90 days in advance of a proposed termination date.

3.0 Services

- 3.1 The Company shall in accordance with this Agreement, provide Maintenance Service during the Principal Period of Contract which will maintain the website/menu according to its specification at time of handover.
- 3.2 When the Customer informs the Company that the menu software is faulty, the Company service personnel shall either repair remotely or attend the Site within the specified Response Time to undertake diagnosis, repair or replacement to clear a defined fault except where diagnosis and correction is able to be performed by remote access.
- 3.3 Where the fault is cleared by the replacement of a faulty item, the replacing item may be either new or if not new, the replacing item will assume existing warranty rights of the replaced item.
- 3.4 Items removed as a result of Services become the property of the Company. Where replacement items have been derived from the Customer's own stock, the Company will provide like items as soon as is reasonably practicable.
- 3.5 In the event that the fault is not cleared during the Principal Period, the Customer may request the Company to work outside of the Principal Period. The Company may undertake this work subject to the availability of suitable technical staff and an authorised work order being provide prior commencement of work.

4.0 Services Excluded

- 4.1 The Customer acknowledges and agrees that the obligation to provide Services does not apply to:
 - i) Equipment or Services excluded or not described in the Agreement Schedules;
 - ii) Equipment which has been operated in a manner which is not in accordance with the supplied documentation.
 - iii) Equipment which has suffered physical damage through Customer misuse;
 - iv) Equipment which has been damaged by electromagnetic or electrostatic interference, or power disturbances;
 - v) Equipment which has been damaged by being operated with unapproved consumable supplies or accessories;
 - vi) Installation, removal or relocation of equipment;
 - vii) Any battery back-up associated with the Equipment;
 - viii) The refurbishment of the Equipment or provision of operating supplies or accessories.

5.0 Service Charges

- 5.1 In return for the provision of Services under this Agreement the Customer shall pay the Service Charges total as specified in Schedule A.
- 5.2 The Customer acknowledges and agrees the Service Charges are based on the capacity of the System and that no reduction in the use or the availability of the Equipment shall decrease the Service Charges payable.
- 5.3 The Service Charges may be revised by the Company from time to time and notice of variations will be sent to the Customer 30 days prior to effect and will not apply until the next due date for payment of Service Charges.

- 5.4 If the Company determines that the work required in providing Services results from activities other than normal usage of the system as defined in its specification or other than normal fair wear and tear or the Customer requests work outside of the scope of this Agreement, then the Company may make charges for this work over and above the Service Charges and obtain the Customer's acceptance of these charges prior to the work being undertaken.

- 5.5 All Service Charges payable to the Company by the Customer in accordance with this Agreement shall be paid within 7 days of the date of invoice ("the due date"). If the Customer defaults in payment by the due date, the Company shall have the right to do any or all of the following:

- (i) Suspend its obligations to provide Services;
- (ii) Terminate the Agreement;
- (iii) Charge interest calculated from the due date for to the actual date of payment of any amounts owing at the Australia and New Zealand Bank's Published Base Rate plus two percent per annum.

- 5.6 The obligations of the Customer pursuant to this Clause 5 shall remain in full force and effect after the termination of this Agreement and shall not be deemed to have been waived, merged or extinguished upon such termination.

6.0 Responsibility of the Customer

- 6.1 To permit the Company to fulfil its obligations pursuant to this Agreement, the Customer shall:
 - i) Nominate an appropriate person to be the Customer's contact with the Company regarding Services.
 - ii) Ensure that Company service personnel have free and safe access to the Equipment at all times during the Principal Period.
 - iii) Provide without expense to the Company adequate space, light, electric power sockets and access to a telephone or router with passwords where required.
 - iv) Make available on request the services of any person who operates the Equipment at the Site;
 - v) Notify the Company immediately if the Customer ceases to be in possession of the Equipment at the Site;
- 6.2 The Customer shall not carry out, or cause to be carried out by other persons, modifications or adjustments to the equipment without 30 days prior written notice.

7.0 Force Majeure

The Customer acknowledges that the Company shall not be liable in any way whatsoever for delays or failure in performance resulting from acts beyond the reasonable control of the Company which may not be overcome by due diligence. Such acts shall include but not be limited to acts of God, strikes, lock outs, labour disputes, material shortages, riots, acts of war, governmental regulation imposed after the fact, flood, fire, earthquake, power supply disturbances, blackouts or other such natural disasters. The obligations of the Company so far as they are affected by such occurrence, shall be suspended during the continuance of any inability so caused, and such inability shall not be a breach of this Agreement.

8.0 Limitation of Liability

Subject only to its liability under warranties or conditions implied by the Trade Practices Act, the Company shall have no liability for loss of profit or of contract howsoever arising nor for any injury, consequential damage or loss save as expressly provided in this Agreement.

9.0 Waiver and Severance

Any indulgence granted by the Company to the Customer and any failure by the Company to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of the Company's rights or remedies nor be deemed a waiver of any subsequent default by the Customer. The invalidity in whole or in part of any clause in these terms and conditions shall not affect the validity of the remainder of such clause of these terms and conditions.

10.0 Construction of Contract and Governing Law

These terms and conditions constitute the entire agreement between the Company and the Customer for the provision of Maintenance Services and supersede and take precedence over all prior agreements, understandings and negotiations relating to Maintenance Services. The conditions may not be changed or modified in any way except by an instrument in writing signed by the Customer and the Company. The validity, interpretation and application of any quotations or contracts embodying these terms and conditions shall be governed by and construed in accordance with the law of the State of QLD