

MENDIT

WARRANTY TERMS AND CONDITIONS

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These Terms are incorporated into every Warranty Agreement between You, the customer, and MendIT to purchase extended warranty cover following expiry of the manufacturer's guarantee for the Equipment.

1. INTERPRETATION

1.1 In these Terms:-

1.1.1 "the Commencement Date" means the date on which these Terms become effective;

1.1.2 "Consequential Loss" means consequential loss including but not limited to any financial loss or the cost of business interruption arising from the loss of use of the Equipment or the loss of information contained in or stored on the Equipment, any time and cost involved in the reinstating of such information and any liability to any third party for delay or non-performance of any contract with the third party. Consequential Loss shall also include loss of use of any item of Equipment (not itself covered by the Services due to its incompatibility with any item of Equipment repaired or replaced under this MendIT warranty);

1.1.3 "the Equipment" means desktop, laptop or other computer equipment supplied to customers located in the mainland UK (ie. excluding Northern Ireland, Isle of Man, Shetland Islands and all other islands in the UK) which is registered within the Registration Period for the MendIT warranty;

1.1.4 "the Location" means the customer's business premises or home, at which the Equipment is registered within the United Kingdom;

1.1.5 "MendIT" means MendIT (company number 7423708) trading as MendIT;

1.1.6 "Mechanical Electrical Breakdown" means the actual and sudden mechanical/electrical failure or breakdown which results in the sudden stoppage of the Equipment's normal function, which necessitates repair to resolve those functions;

1.1.7 "Registration Period" means within [90 days][12 months] of the date of purchase of the Equipment;

1.1.8 "Normal Working Hours" means between the hours of 9.00am and 5.30pm each day excluding Saturdays, Sundays and public holidays in the United Kingdom;

1.1.9 "the Services" means repair as a result of Mechanical Electrical Breakdown during the Warranty Period by one of the warranty service options agreed to be provided by MendIT; and

1.1.10 "Warranty Period" means the period specified in your MendIT Warranty, being either 2 or 4 years from the date of expiry of the manufacturer's own warranty on the Equipment.

2. THE SERVICES

2.1 You are entitled to the Services in accordance with these Terms if a repair is required to your Equipment within the Warranty Period for reasons of Mechanical Electrical Breakdown.

2.1.1 Pick up and return warranty service Your MendIT warranty may include a pick up and return warranty service. Under the terms of the pick up and return warranty service, MendIT will pick up the defective Equipment from your location, repair it and return it to your location. Subject to clause 3, MendIT will incur all collection, repair, re-delivery and insurance costs for this type of service.

2.1.2 Return to base warranty service Your MendIT warranty may include a return to base warranty service. Under the terms of this service, you will be required to have your Equipment delivered to a MendIT authorised service location for warranty repair. You must pre-pay all postage and shipping charges associated with transportation of the Equipment to the repair location. The Equipment is at your risk of loss during delivery to MendIT so you should insure it. MendIT will return the repaired Equipment to you and incur all delivery and insurance costs to return the Equipment to you, except in the circum-

stances of clauses 3.1 or 3.2, when MendIT shall be entitled to make a charge of £25 for investigating a warranty repair not covered by this warranty and you will be responsible for collection or the delivery and insurance costs for return of the Equipment to you.

2.1.3 On site warranty service Subject to clause 3, your MendIT warranty may include an on site warranty service. Under the terms of the on site service, MendIT may at its sole discretion determine if a defect can be repaired:- by the use of a replacement part; or by a service call at the location of the defective equipment. If MendIT determines an on site service visit is required to repair the defective Equipment, the on site visit will be scheduled during Normal Working Hours.

2.1.4 The on-line maintenance service shall be limited to Locations on the UK mainland (ie. excluding Northern Ireland, Isle of Man, Shetland Islands and all other UK islands).

2.1.5 Warranty service delivery methods MendIT warrants its delivery service on the Equipment via several delivery methods. Unless otherwise stated, all responses are measured from the time you call MendIT with the claims information:- on site: MendIT aim to ensure that your problem will be responded to within 8

Normal Working Hours of your first notification of Equipment failure and aim to ensure the Equipment will be operating within 5 days of the on-site visit; return to base: MendIT aim to ensure the Equipment will be operating and returned to you within 5 days of receipt at MendIT's workshop location; pick up and return: MendIT will agree a time of collection with you and MendIT aims to ensure the Equipment will be operating and returned to you within 5 days of receipt at MendIT's workshop location.

3. CHARGES

3.1 If MendIT determines that any fault reported is not covered by the warranty service, you will be contacted to determine whether such faults could be repaired for a charge or whether the Equipment should be returned as received. All associated transportation and handling costs and any abortive site visit are charged to you and payable before we carry out any chargeable work.

3.2 MendIT shall make a charge of £50 for on site visits and £25 for collections under the pick up and return service which are:

3.2.1 made at your request by reason of any fault in the Equipment due to causes not covered by the warranty service; or

3.2.2 made at your request but which MendIT finds are frivolous or not necessary; or

3.2.3 which prove abortive as there is no representative at the location for the booked on site visit, or pre-arranged collection of the Equipment.

3.3 Any spare parts which are not included in MendIT's warranty shall be supplied by it at its list prices from time to time in force.

3.4 Any charges payable by you hereunder shall be paid (unless otherwise provided elsewhere in these Terms) upon receipt of MendIT's invoice therefor and before the Equipment is collected or returned.

3.5 The charges payable under these Terms are exclusive of Value Added Tax which shall be paid by you at the rate and in the manner for the time being prescribed by law.

3.6 If any sum payable under these Terms is not paid within 7 days after the due date, then (without prejudice to MendIT's other rights and remedies) MendIT reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 2 per cent above the base rate of HSBC Bank Plc from time to time in force compounded quarterly. Such interest shall be paid on demand by MendIT. In addition MendIT shall be entitled to suspend provision of the Services until such time as the payment is made.

4. EXCEPTIONS

4.1 The Services are limited to Mechanical Electrical Breakdown dur-

ing the Warranty Period and exclude:-

- 4.1.1 any repair of the Equipment which is necessitated as a result of fair wear and tear;
- 4.1.2 failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or
- 4.1.3 accident, loss or damage in transit, neglect, misuse, malicious or intentional damage, abuse, contamination or default by you, your employees or agents or any third party or other external carriers; or
- 4.1.4 any fault in any attachments or associated equipment (whether or not supplied by MendIT) which do not form part of the Equipment; or
- 4.1.5 act of God, terrorism risk, fire, flood, war, nuclear risk, sonic boom, act of violence, or any other similar occurrence; or
- 4.1.6 any attempt by any person other than MendIT's personnel to adjust, repair or maintain the Equipment; or
- 4.1.7 any head crash or failure of 3rd party removable storage media; or
- 4.1.8 corrupted or conflicting software installed or as a result of a virus infection; or
- 4.1.9 any inoperability or compatibility issues that may arise when parts intended for one system are installed in another system of a different make or model; or
- 4.1.10 any fault occurring as a result of your failure to follow the manufacturer's instructions for the use of the Equipment; or
- 4.1.11 damage caused by foreign objects or substances; or
- 4.1.12 any repair where the manufacturer's repairer's seal is broken on the Equipment.

4.2 The Services also exclude:

- 4.2.1 any repair or spare part covered under any other guarantee, warranty, maintenance, rental, hire or lease agreement you may have with a third party and including but not limited to the manufacturer;
- 4.2.2 the provision of Services on site other than at the Location (or such other location as MendIT shall have approved in writing);
- 4.2.3 repair or renewal of expendable or consumable parts including but not limited to tapes, disk packs, printing cartridges;
- 4.2.4 maintenance or support of the operating system of any computer;
- 4.2.5 electrical or other environmental work external to the Equipment;
- 4.2.6 maintenance of any attachments or associated equipment not supplied by MendIT which do not form part of the Equipment;]
- 4.2.7 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment; or
- 4.2.8 any repair relating to a manufacturing fault or manufacturer's recall.

5. REPLACEMENT

5.1 MendIT reserves the right to replace the whole of the Equipment or any part or parts thereof which may be found to be faulty if spare parts are unavailable or, in the sole opinion of MendIT, it is not economically viable to repair the Equipment.

5.2 MendIT shall at the time of any such replacement notify you in writing of the serial numbers of the replacement Equipment.

5.3 If the replacement Equipment is not equipment which is identical in all respects to the removed Equipment, MendIT shall inform you in writing at the time of replacement. The replacement Equipment shall not in any event provide less than an equivalent level of performance and functionality to the removed Equipment.

5.4 The replacement Equipment shall become your property. The removed Equipment removed pursuant to this clause 5 shall become the property of MendIT.

5.5 These Terms shall apply to all renewals of any part or parts of the Equipment made by MendIT during the Warranty Period.

5.6 Before removing any Equipment or part thereof, you may request that MendIT, for a charge of £50, (and provided that the condition of the removed Equipment reasonably allows) provides you with a data copy service of all information or data which may be stored on the

removed Equipment. MendIT thereafter undertakes not to disclose any such information or data but to expunge it forthwith from the removed Equipment.

5.7 Should the Equipment be replaced pursuant to this clause 5, then the extended warranty terms shall cease.

6. DURATION

6.1 These Terms shall continue for the Warranty Period but shall be subject to earlier termination as provided elsewhere in these Terms.

7. YOUR OBLIGATIONS

7.1 During the continuance of this Agreement you shall: Use and Care of the Equipment

7.1.1 ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;

7.1.2 not make any modification to the Equipment without MendIT's prior written consent;

7.1.3 keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions;

7.1.4 ensure that the external surfaces of the Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time;

7.1.5 save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit or authorise anyone other than MendIT to carry out any adjustments, repairs or maintenance of the Equipment;

7.1.6 use on the Equipment only such operating supplies as the manufacturer shall recommend in writing; Access – in the event of on-site warranty services

7.1.7 upon reasonable notice, provide MendIT with full and safe access to the Equipment for the purposes of these Terms;

7.1.8 provide adequate working space around the Equipment for the use of MendIT's personnel;

7.1.9 have a representative present at the location when MendIT provide on site warranty Services;

7.1.10 ensure that all manufacturer's labels (such as serial numbers) are in place, accessible and legible; Registration, Notification and Information in order to claim your Warranty support, the Equipment must have been registered within the Registration Period and you must:-

7.1.11 promptly notify MendIT, providing the Equipment type and product number/serial number and reference number on your warranty agreement, if the Equipment needs

repair or is not operating correctly. Failure by you to so Register the Equipment and to so notify MendIT within 30 days of you first becoming aware of such failure or

incorrect operation shall free MendIT from all obligations to investigate or correct such failure or incorrect operation; Miscellaneous

7.1.12 provide such telecommunication facilities as are reasonably required by MendIT for testing and diagnostic purposes at your expense;

7.1.13 before releasing any Equipment for Service and prior to any on site warranty visit, be sure to back up data, keep full security copies of your programs, databases and computer records in accordance with best computing practice and remove any confidential, proprietary or personal information.

7.2 Before we provide the Services, you should consider:-

7.2.1 making a back up of any data you have only on the computer or storage device which is to be the subject of or to be used in the performance of the Services;

7.2.2 making a written note of any configuration settings or information stored on any equipment or computers;

7.2.3 where the equipment is a computer, downloading and installing:- any available security and protection updates for the operating system you use; and any available updates to virus-checking and other computer protection software you use.

8. SPARE PARTS

8.1 MendIT shall not be liable for any delay in performing its obligations hereunder by delay in the supply to MendIT of spares parts or

components by their manufacturers, suppliers or agents or if any recommended spare parts are not available (otherwise than due to MendIT's fault).

9. PERSONAL DATA

9.1 In performing its Services under this Agreement MendIT may process (albeit for diagnostic or investigative purposes only) your personal data. MendIT hereby warrants to you that in such circumstances it will in respect of such personal data observe all the obligations pertaining to a data processor under the Data Protection Act 1998 and will indemnify you against all breaches of the said Act by it in respect of your data.

10. YOUR WARRANTY

10.1 You hereby warrant to MendIT that you have not been induced to enter into these Terms by any prior representations or warranties, whether oral or in writing, except as specifically contained in these Terms and you hereby irrevocably and unconditionally waive any right you may have to claim damages for any misrepresentation not contained in these Terms or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind these Terms.

11. LIABILITY

YOUR ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS

11.1 Subject to the provisions of clause 9, MendIT shall not be liable for any loss or damage sustained or incurred by you or any third party (including without limitation any loss of use of the Equipment or loss or corruption of your programs or data) resulting from any breakdown of or fault in the Equipment unless such breakdown or fault is caused by MendIT's negligence or wilful misconduct, its employees, agents or sub-contractors, or to the extent that such loss or damage arises from any unreasonable delay by MendIT in providing the Services and then only to the extent not excluded by these Terms.

11.2 MendIT shall indemnify you and keep you fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct by MendIT, its employees, agents or sub-contractors.

11.3 You shall indemnify MendIT and keep MendIT fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission by you or your wilful misconduct, or that of your employees, agents or sub-contractors.

11.4 Except in respect of injury to or death of any person (for which no limit applies) MendIT's liability is expressly limited to the cost of repair including replacement of any hardware components of any part of the Equipment which malfunctions in conditions of normal use or the cost of replacement of the Equipment if the Equipment is not economically repairable or due to non-availability of spare parts. This limitation applies where any claim is made under this warranty or as a tort claim (including negligence), a contract claim or any other claim.

11.5 Notwithstanding anything else contained in these Terms, MendIT shall not be liable to you for loss of profits or contracts or other indirect or Consequential Loss whether arising from negligence, breach of contract or howsoever.

11.6 MendIT shall not be liable to you for any loss arising out of your failure to keep full and up-to-date security copies of the computer programs and data you use in accordance with best computing practice.

11.7 The level of your extended warranty cover provided by MendIT will be limited to the price band applicable to the purchase price of the Equipment (less VAT), which will be stated on the face of your Warranty Agreement (or to replacement of the Equipment).

11.8 This limited liability gives specific legal rights. You may also have other statutory rights which are not affected by these Terms or any exclusions or limitations in them.

12. WAIVER OF REMEDIES

12.1 No forbearance, delay or indulgence by either party in enforcing

the provisions of these Terms shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

13. ENTIRE AGREEMENT

13.1 These Terms supersede all prior agreements, arrangements and understandings between the parties and constitute the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentations upon which the other party can be shown to have relied). No addition to or modification of any provision of these Terms shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

14. ASSIGNMENT

14.1 This MendIT warranty is personal to you and may not be assigned by you.

14.2 MendIT may assign its rights and obligations under these Terms at any time by notice to you.

15. NOTICES

15.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in these Terms or such other address in England as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

16. INTERPRETATION

16.1 In this Agreement:

16.1.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

16.1.2 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;

16.1.3 any reference to a party to these Terms includes a reference to his successors in title and permitted assigns;

16.1.4 the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of these Terms.

17. LAW

17.1 These Terms shall be governed by and construed in accordance with the laws of England and Wales.

18. DISPUTES

18.1 Any dispute which may arise between the parties concerning these Terms shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

19. SEVERABILITY

19.1 Notwithstanding that the whole or any part of any provision of these Terms may prove to be illegal or unenforceable, the other provisions of these Terms and the remainder of the provision in question shall remain in full force and effect.

20. THIRD PARTIES

20.1 The parties confirm their intent not to confer any rights on any third parties by virtue of these Terms and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to these Terms.