

# Terms & Conditions of Arts Alliance Media Ltd ("AAM") UK Maintenance Services

The Exhibitor's attention is in particular drawn to paragraph 8.

## 1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause have the following meanings and apply in these terms and conditions:

- (a) **AAM Personnel** all employees, agents, consultants, subcontractors and contractors of AAM who are wholly or partly engaged in providing the Services and/or in fulfilling AAM's obligations, or exercising AAM's rights, under the Contract.
- (b) **Contract** any contract between AAM and the Exhibitor (including invoices signed by AAM) for the delivery of maintenance services in the UK, incorporating these terms and conditions.
- (c) **Ancillary Equipment** the additional equipment supplied by AAM to complete the digital cinema system at each Site. This would typically include routers, switches, UPS etc and specifically excludes the Digital Projector and the Media Server.
- (d) **Business Day** a day other than a Saturday or Sunday or bank holiday.
- (e) **Consumables** items or components of the Equipment that are defined by the Equipment manufacturer as consumables, i.e. such parts or sub-assemblies that are reasonably expected to require replacement during the lifetime of the system.
- (f) **Digital Projector** the DCI compliant digital cinema projection equipment and associated sub-assemblies (lamps, chassis, light engine etc.).
- (g) **Digital Title** a film to be exhibited via the Equipment.
- (h) **Effective Date** the date set out in the Contract.
- (i) **Equipment** hardware equipment and related components materials and articles installed at the Sites as set out in the relevant Site Specification Forms.
- (j) **Maintenance Services** the services described and priced in the Schedule of these terms and conditions.
- (k) **Media Server** the DCI compliant media playout RAID server and associated sub-assemblies (RAID disks, software, chassis etc.).
- (l) **Period of Cover** the time periods during which services are agreed to be provided for each Site as set out in the Contract.
- (m) **Sites** the Exhibitor's locations specified in the Contract but only in respect of the screens set out therein, details of which are set out in the Site Specification Forms, which are covered by these terms and conditions.
- (n) **Service Level** the level of Maintenance Services to be provided, as set out in the Contract.
- (o) **Site Specification Form** the completed forms containing details of the Sites (including Equipment and Software specifications) in a form reasonably required by AAM.
- (p) **Software** original modified or updated software as set out in the relevant Site Specification Form.

1.2. All times referred to in these Terms and Conditions are assumed as working days (Monday to Friday excluding Bank Holidays 9am to 6pm).

1.3. Clause headings are for ease of reference only and shall not affect the construction of these Terms and Conditions.

1.4. The Schedules form part of these Terms and Conditions and shall have effect as if set out in full in the body of these Terms and Conditions. Any reference to these Terms and Conditions includes the Schedules.

1.5. Words in the singular shall include the plural and vice versa.

1.6. A reference to writing or written includes faxes but not e-mail.

1.7. Where the words include(s), including or in particular are used in these Terms and Conditions, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.8. Any obligation in these Terms and Conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9. References to clauses and schedules are to the clauses and schedules of these Terms and Conditions.

## 2. APPLICATION OF TERMS

2.1. Subject to any variation pursuant to clause 2.3, any Agreement shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Exhibitor purports

to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed on, delivered with or contained in the Exhibitor's purchase order, confirmation of order, specification or other document shall form part of the Contract, whether such document is referred to in the Contract or not. All samples, drawings, descriptive matter, specifications and advertising issued by AAM and any descriptions or illustrations contained in AAM's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Content described in them.

2.3. These terms and conditions apply to all AAM's supply of content processing services and any variation to these terms and conditions and any representations about the Content shall have no effect unless expressly agreed in writing and signed by AAM's Chief Operating Officer, or a Director of AAM. The Exhibitor acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AAM which is not set out in the Contract or these terms and conditions. Nothing in this paragraph shall exclude or limit AAM's liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a quotation for Content by the Exhibitor from AAM shall be deemed to be an offer by the Exhibitor subject to these terms and conditions.

2.5. The Exhibitor shall ensure that the terms of its order and any applicable specification are complete and accurate.

## 3. AAM'S OBLIGATIONS

AAM agrees for 1 (one) year from the Effective Date to provide, during the relevant Periods of Cover, to the relevant Sites, the Maintenance Services relating to the Service Level.

## 4. SERVICE LIMITATION

4.1. Upon the Exhibitor's written request, AAM may at its sole discretion agree to carry out any of the following additional services, and to levy the appropriate charge for such services:

- (a) any remedial maintenance which is necessitated other than by fair wear and tear or ordinary use or is necessary due to general environmental conditions accident or disaster (including fire, water and lightning damage and failure of electricity, air extraction or air conditioning); or
- (b) any service rendered necessary due to the Exhibitor's neglect misuse or abuse of the Equipment or Software, or the Exhibitor's methods of use of the Equipment or Software or the use of replacement parts, supplies or accessories not approved in writing or supplied by AAM; or
- (c) any service rendered necessary due to persons other than AAM's Personnel carrying out maintenance service on the Equipment; or
- (d) any service involving Exhibitor requested alterations or specification changes not covered under the Maintenance Services; or
- (e) any service involving electrical or communication cable work which is external to the Equipment or any service involving the additional removal or maintenance of accessory equipment not supplied by AAM, unless agreed in writing by AAM to be covered under the Contract; or
- (f) any requests for service outside of the Period of Cover or any service due to causes external to the Equipment.

4.2. Tools, documentation, maintenance materials, test equipment, diagnostics and site logs provided by AAM shall remain AAM's exclusive property.

4.3. Maintenance Services shall not include the supply of Consumables, painting or refurbishing Equipment, or supplying related materials or Consumables.

4.4. AAM will not render any service under conditions which in AAM's reasonable opinion could be potentially dangerous or harmful to AAM's Personnel.

## 5. CHARGES

5.1. The Exhibitor agrees to pay AAM the per-screen charges, specified in the Maintenance Services, for all Sites or those charges from time to time substituted in accordance with clause 5.2. Charges for part of a month shall be pro-rated.

5.2. AAM may increase charges by giving the Exhibitor at least three (3) months prior written notice. Such changes will take effect from the anniversary of the Contract unless the Exhibitor terminates the Contract in accordance with clause 10.6.

5.3. Charges related to any items of Equipment which are added or replaced during the term of the Contract will be at AAM's rates then in effect at the date such items of Equipment are supplied.

5.4. The Exhibitor must pay all charges that AAM invoices within 30 (thirty) days of the date of the invoice.

## 6. EXHIBITOR RESPONSIBILITIES

The Exhibitor must:

6.1. purchase a suitable warranty from the manufacturer of the Digital Projector and Media Server to cover the period of Maintenance Services contracted herein and on an ongoing basis;

- 6.2. notify AAM immediately of any malfunction;
- 6.3. allow AAM full and free access to the Equipment and/or Software;
- 6.4. ensure the Exhibitor's representative is present during Maintenance Services if performed at a Site;
- 6.5. provide, at the Exhibitor's expense, any reasonable secure storage facilities and work space required to perform the Maintenance Service;
- 6.6. maintain site conditions within the environmental range specified for the Equipment and/or Software;
- 6.7. operate the Equipment in accordance with AAM's recommended operating procedures;
- 6.8. allow AAM the use of its maintenance and diagnostic aids;
- 6.9. promptly notify AAM in writing of changes of location of Equipment; and
- 6.10. provide at the Exhibitor's expense a safe working environment.

## 7. WARRANTY

- 7.1. AAM warrants that it will exercise reasonable care and skill in the performance of the Maintenance Services.
- 7.2. AAM does not warrant that the provision of Maintenance Services will be uninterrupted or error free and where the Maintenance Service involves provision of information the Exhibitor will be solely responsible for the use to which it is put and all results the Exhibitor obtain from the information contained in the Maintenance Services.

## 8. REMEDIES

- 8.1. The following provisions set out AAM's entire liability (including any liability for the acts and omission of AAM's employees) to the Exhibitor in respect of:
  - (a) any breach of AAM's contractual obligations arising in terms hereof; and
  - (b) any representation statement or tortuous act or omission including negligence arising under or in terms hereof.
- 8.2. Any act or omission on AAM's part falling within this Clause 8 shall for the purposes of this clause be known as an 'Event of Default'.
- 8.3. AAM's liability to the Exhibitor for death or personal injury resulting from its own or that of its employees' negligence shall not be limited.
- 8.4. AAM shall accept liability to the Exhibitor in respect of direct physical damage to the Exhibitor's tangible property resulting from AAM's employees' negligence subject only to the limitations and exclusions set out in clauses 8.5 and 8.6.
- 8.5. Subject to Clause 8.3 above, AAM's entire liability in respect of any Event of Default, shall be limited to damages of an amount equal to the aggregate of the relevant charges paid by the Exhibitor for Maintenance Services in respect of which an Event of Default took place for the period of twelve (12) months immediately preceding the date on which the Event of Default took place or £50,000, whichever shall be the lower.
- 8.6. Subject to Clause 8.3 above, AAM shall not be liable to the Exhibitor in respect of any Event of Default for loss of profits, goodwill, or any type of special indirect or consequential loss (including loss or damages suffered by the Exhibitor as a result of an action brought by a third party) even if such loss was reasonably foreseeable or AAM had been advised of the possibility of the Exhibitor's incurring the same.
- 8.7. If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim in terms hereof.
- 8.8. Except in the case of an Event of Default arising under Clause 8.3 above, AAM shall have no liability to the Exhibitor in respect of any Event of Default unless it shall have served notice of the same upon AAM within 3 (three) months of the date the Exhibitor became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 8.9. Nothing in this Clause 8 shall confer any right to remedy upon the Exhibitor to which the Exhibitor would not otherwise be legally entitled.
- 8.10. Except as expressly stated in the Contract, all conditions and warranties express or implied, statutory or otherwise are hereby excluded.

## 9. CONFIDENTIAL INFORMATION

- 9.1. All information furnished or disclosed by AAM in writing and marked 'Confidential' or 'Proprietary' or 'Private' shall remain its property and shall not be disclosed by the Exhibitor to any other person, and the Exhibitor shall restrict circulation of such information within the Exhibitor's own organisation on a need-to-know basis. All documents, drawings, sketches, designs, diagnostic materials (whether electronic or other form) and other information furnished by AAM and marked 'Confidential' shall be returned to AAM promptly on request, together with all copies or destroyed as instructed by AAM.
- 9.2. This condition shall remain in full force and effect for so long as any such information does not fall within the public domain (other than as a result of any act or omission on the Exhibitor's part) and not withstanding termination in whole or in part of the other provisions of the Contract.

## 10. TERMINATION

- 10.1. AAM shall be entitled to terminate the Contract immediately:
  - (a) if the Exhibitor fails to pay AAM any charges due under the Contract within 30 (thirty) days of the invoice date; or
  - (b) if any distress or execution is levied on the Exhibitor's property or if the Exhibitor makes any offer or arrangement or composition with its creditors or commit an act of bankruptcy or if any receiving or administration order is presented or made against the Exhibitor or if

the Exhibitor have a petition presented or resolution passed for the Exhibitor's winding-up (otherwise than for the purpose of amalgamation or reconstruction) or if a receiver or administrator is appointed over all or any part of its property or assets.

- 10.2. Either party shall be entitled to terminate the Contract in the event of the other being in breach of any of the terms hereof and if the defaulting party has failed to remedy such breach (if the same be capable of remedy) within 30 (thirty) days of the non-defaulting party giving notice thereof.
- 10.3. If AAM is in breach of the target fault fixing response times set out in the Maintenance Services, 3 (three) times during any 12 (twelve) month period, such breaches shall together constitute a material breach incapable of remedy and the Exhibitor shall have the right to terminate the Contract with immediate effect upon providing notice to AAM. In the event of termination pursuant to this clause 10.3, AAM shall refund the pro-rata charges for the remainder of the Contract then in effect.
- 10.4. Either party may remove Equipment from the Site Specification Forms at the annual anniversary of the Contract by giving three (3) months' written notice. If such Equipment is removed by the Exhibitor, AAM reserves the right to recover any quantity or term discounts.
- 10.5. Equipment and/or Software may be added to the Site Specification Forms by the Exhibitor giving written notice to AAM and AAM's accepting such addition in writing.
- 10.6. Either party may terminate the Contract for any reason at the annual anniversary of the Contract, by giving the other three (3) months' written notice.
- 10.7. This contract will be deemed to have been renewed automatically and further fees shall be payable unless written notice of termination is received in accordance with Clause 10.6.

## 11. ASSIGNMENT

- 11.1. The Exhibitor may assign or transfer the Contract only with AAM's prior written consent.
- 11.2. AAM may sub-contract the performance of services hereunder to authorised service representatives or service organisations but shall remain liable to the Exhibitor for all of AAM's existing Service obligations under the Contract.

## 12. AMENDMENTS TO MAINTENANCE SERVICES

AAM shall be entitled to replace, from time to time, the description of the Maintenance Services in order to set out new categories of Equipment and/or Software by providing reasonable notice to the Exhibitor. Such replacement shall be binding on the Exhibitor unless the Exhibitor objects to the new description within one month of receipt thereof from AAM.

## 13. SITE SPECIFICATION FORMS

The contents of the Site Specification Forms may be varied or enhanced by AAM from time to time. Such variations will take effect immediately unless they affect Equipment contained in the Contract in which case AAM will give the Exhibitor 3 (three) months' prior written notice.

## 14. FORCE MAJEURE

- 14.1. Neither party shall be liable for any breach of its obligations under the Contract resulting from causes beyond its reasonable control, including but not limited to fire, strikes (of its own or other employees), insurrection or riots, embargoes, container shortage, wrecks or delays in transportation, inability to obtain supplies or staff and raw materials requirements, or regulations of any civil or military authority (each an 'Event of Force Majeure').
- 14.2. Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, said notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 14.3. If the Event of Force Majeure shall continue for more than 8 (eight) weeks, then the party not in default shall be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of an Event of Force Majeure.

## 15. WAIVER

The waiver by either party of a breach or default by the other party of any of the provisions of the Contract shall not be construed as a waiver of any other breaches or provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have under the Contract, operate as a waiver of any breach or default by the other party.

## 16. INVALIDITY AND SEVERABILITY

If any provision of these terms and conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## 17. EXPORT / RE-EXPORT

The Exhibitor agrees to comply with all applicable laws and regulations regarding the exportation or re-exportation, either directly or indirectly, of articles or technical data supplied by AAM.

## 18. GOVERNING LAW AND JURISDICTION

The Contract shall be construed and governed in all respects according to English law and the Exhibitor hereby agrees to submit to the non-exclusive jurisdiction of the London Courts.