

**Special meanings**

- 1.1 **We, our, us:** M2 Commander Pty Limited ACN 136 950 082 . Also its agents and workers.
- 1.2 **You, your:** the customer in Item 1 of Section A of this Agreement.
- 1.3 **Item:** reference to an Item and a number means that Item in Section A or Section C-1 of this Agreement. Also any further details for that Item in any attachment to this Agreement.
- 1.4 **The Site:** as in Item 1 of Section A.
- 1.5 **The Equipment:** Equipment in Item 2 of Section C-1, also any replacement parts under clause 4, but excluding the Peripheral equipment.
- 1.6 **Peripheral equipment:** the peripheral equipment in Item 4 of Section C-1 marked with an asterisk (\*).
- 1.7 **Faults:** faults, damage, operational errors, and problems to the Equipment. Anything else that goes wrong with the Equipment other than to the Peripheral equipment.
- 1.8 **This Agreement:** these terms and conditions, the Customer Contract Application at Section A, the System/CustomCare Schedule at Section C-1, and any schedules attached which apply depending on whether the standard, enhanced or premium CustomCare schedule has been nominated in Item 5 of Section C-1 as applying.

**Equipment**

- 2.1 We agree to service the Equipment for you for the Contract term specified in Item 3 of Section C-1.
- 2.2 We will do that according to our standard procedures at the time of servicing. These are designed to keep the Equipment in good working order.
- 2.3 If you require the Equipment serviced, please call us on our service hotline 1300 13 88 99. We will advise you of the new number if the current hotline number changes.
- 2.4 Once you call us, we will respond to our commitment in accordance with the CustomCare Schedule attached.
- 2.5 But we do not have to respond at any time outside the coverage commitment in the CustomCare Schedule. For example if you have "8am-5pm, Mon-Fri" coverage, there is no coverage on a Saturday or Sunday.
- 2.6 Also, the response time only runs during the coverage period. [As an example, assume your coverage period is "8am-5pm, Mon-Fri", and the response time is same day response, and you call us before 1pm on a work day, then we must respond the same day. If you call us after 1pm on a work day then we will respond the next day between 8am and 5pm].
- 2.7 Our obligations under this CustomCare Agreement are to:
  - (a) advise you of our fault fixing actions and additional charges (if any), refer clause 6,
  - (b) restore the Equipment to working order within the most expedient time, and

- (c) leave the Site in the same condition as upon arrival, if we attend the Site.

**Other Equipment**

- 3.1 If we notice any problem with any equipment not provided by us or with any Peripheral equipment, we will report it to you.
- 3.2 But please note that checking these items is not part of our CustomCare obligation.

**Parts for the Equipment**

- 4.1 Replacement of all faulty parts/components at the site or if agreed at a Commander location is included if the Fault is as a result of fair wear and tear.
- 4.2 Replacement parts will be of a quality that is fit for purpose.
- 4.3 Any faulty replaced parts belong to us.
- 4.4 We especially do not have to supply any consumables (i.e. cabling, printer paper and the like). We can do so if we wish. If we do so, we can charge you for them.

**What our CustomCare does not cover**

- 5.1 CustomCare does not cover:
  - (a) servicing on Equipment not provided by us, servicing on Peripheral equipment or cabling,
  - (b) changing the Equipment or relocating it, or attaching things to it, or removing things from it,
  - (c) fixing any Faults in the Equipment other than those caused in normal proper use,
  - (d) taking responsibility for lines or network terminations on the Equipment, as this is your network provider's responsibility unless the work is performed by us (i.e. cabling),
  - (e) fixing problems or damage caused by events beyond our control, including accident, lightning, power surges, power failures, over-hot or over-cold conditions, vandalism or misuse. Or
  - (f) Travel and expenses where on-site support is required at a Site located more than 100km from our point-of-presence, which are payable by you as extra charges.
- 5.2 We do not have to fix any Fault caused or contributed to by:
  - (a) anything attached to the Equipment, or to the Peripheral equipment (unless we agreed in writing to it being attached),
  - (b) non-compliance with any guidelines on the use and care of the Equipment, or
  - (c) anything done, or not done, to the Equipment by anybody apart from us and which affects the Equipment.

**Extra work and charges**

- 6.1 If we service any Fault not covered by this Agreement, you must pay our extra charges (for parts and labour). But only if you agreed to pay beforehand.

6.2 However, if you have anything done to the Equipment without our written authority and, as a result, corrective work is required, we are entitled (but not obliged) to do that corrective work. If we elect to do it, you must pay our extra charges to do it.

6.3 You must pay any extra charges set out in the invoice we give you for them.

#### **Your other obligations**

7.1 Unless you first get our written consent, you must not change or repair the Equipment, or attach anything to it.

7.2 When using the Equipment, you must comply with any guidelines of ours, or of the supplier or manufacturer of the Equipment.

7.3 You must tell us immediately you no longer have the Equipment.

7.4 You must protect the Equipment from electromagnetic interference.

7.5 If a Fault occurs wholly or partly because of something done, or not done, contrary to 7.1, 7.2 or 7.4, we do not have to fix it.

7.6 You must arrange for servicing of the Peripheral equipment by the manufacturer or any of its authorised service providers.

#### **You must use recommended consumables**

8.1 You should only use consumable items that have been recommended for use with the Equipment. Consumables are things such as, for example, cassette and magnetic tapes, diskettes, cartridges, disk packs, printer ribbons, batteries and paper.

8.2 We take no responsibility for any Fault or loss which happens (whether to the Equipment or any software used with it) as a result of using consumable items.

#### **What if you break this Agreement?**

9.1 You must comply with all your obligations in this Agreement fully, correctly and on time. Each is a fundamental and essential condition and your strict compliance is required.

9.2 You will be deemed to have repudiated this Agreement if you breach any of your obligations under this Agreement.

#### **Limits on our Liability**

10.1 To the full extent permitted by law, any warranty or condition implied (or other liability put on us) under law is excluded from this Agreement. However, if it cannot lawfully be excluded, then if allowed, our liability is limited to repairing or replacing or re-servicing the Equipment or supplying equivalent equipment (whichever option we choose) at no charge to you.

10.2 We have no liability to you except as written in this Agreement, or except for our deliberate misconduct. 10.3 Subject to 10.1, we exclude all liability in Contract, tort (including negligence) or otherwise for all claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of

profits, costs of delay or data or otherwise) suffered or incurred by you or anybody else because of a failure of the Equipment or any act, omission, delay or non performance by us or any network service provider.

#### **When may compliance be excused?**

11.1 This clause 11 applies if a party cannot fully comply with an obligation under this Agreement due to a cause out of the party's reasonable control.

11.2 In that case, so far as, and for as long as, the party cannot comply with the obligation due to that cause, the party is excused from doing so.

11.3 Industrial disputes, any changes in the law and our failure to obtain materials from our suppliers are, amongst others, to be treated as causes out of our reasonable control. Payment of money is never excused.

#### **Our right of entry**

12.1 We or our agents can enter the Site (or any other place) to service the Equipment. You must assist us in doing so.

#### **Our cooling off right**

13.1 Commander may cancel this Agreement by written notice to you so long as the notice is given within 14 days after this Agreement is made.

#### **Void or unenforceable terms**

14.1 Clauses in this Agreement must be read so that they are not illegal, void or unenforceable.

14.2 If they cannot, they must be severed (that is, treated as if cut out).

14.3 The rest of this Agreement is not affected if any clauses are read down or severed.

#### **Signing over rights or obligations**

15.1 Except with our written consent, you cannot transfer any of your rights or obligations under this Agreement to anybody else.

#### **Certificate**

16.1 A certificate given by us or on our behalf regarding any amount owing by you under this Agreement, the occurrence of any event or the existence of any fact is prima facie evidence of the matters certified.