

# MAINTENANCE AGREEMENT TERMS AND CONDITIONS

## 1. MAINTENANCE PERIOD, CHARGE AND LIMITS

(a) This agreement shall start on the commencement date specified overleaf and shall continue for an initial period of 12 months, or as initially amended by a Special Condition, from that date and thereafter from year to year (each year starting on the anniversary of the commencement date) until terminated by prior notice in writing by either party to the other, such notice to be a minimum of 42 days prior to the annual anniversary date. Such notice shall be deemed to be received within a week of being posted to the last known address of the party to whom it is given.

(b) The Annual Maintenance Charge for the initial period of 12 months shall be the charge specified on the front of the document ("the front"), or as amended.

For each subsequent year during the continuation of this Agreement, the Annual Maintenance Charge shall be fixed according to the Company's current charges at the beginning of that year for the type and quantity of equipment ("the Equipment") specified on the front, the "class of service" offered, and in consideration of any "Special Conditions" detailed therein. The Annual Maintenance Charge for each year during which this Agreement continues shall be paid before the date on which that year begins together with any applicable VAT or other tax.

(c) The Maintenance Services provided by the Company under this agreement shall not cover:-

Making good defects in the electricity supply, British Telecom or other network operators service and connections, and/or host PBX systems, computer hardware, servers, hubs, etc. (unless included within this Agreement).

Service visits made for these purposes will be charged to the Customer at the Company's standard rates.

## 2. SERVICE AND REPAIR

During the period of this Agreement in consideration of the payment of the service charge and applicable to the class of service (and "Special Conditions" where applicable), as stated in the schedule, the Company shall as soon as reasonably practicable after notification of a fault, provide an Engineer to carry out, during its normal business hours, or as otherwise agreed within this Maintenance Agreement, any servicing of and repairs and replacements to the Equipment, associated wiring and reprogramming of the software inaccessible to the Customer through normal operating procedures, (including the provision of any necessary materials and spare parts) that may be reasonably requested by the Customer and that are necessary, and are a result of 'fair wear and tear' arising from the proper operation of the Equipment. Any servicing, repair or replacements or customer visits necessary as a result of causes other than 'fair wear and tear' or from the improper operation of the Equipment or communications network, may be carried out by the Company but at the Customer's expense at the Company's current charges. Causes other than 'fair wear and tear' and improper operation of the Equipment shall include, but are not limited to:-

Misuse, incorrect environmental conditions including incorrect temperature and humidity levels, faulty manufacturer design, (including hardware and/or software) mains electrical surges or failures, lightning damage, electromagnetic interference, failure of BT or other network operators service, any other accidental or deliberate damage.

All servicing, repairs or replacements may be carried out at the premises where the Equipment is installed, or elsewhere at the option of the Company.

## 3. ALTERATIONS TO EQUIPMENT AND EXTENSION/LINE WIRING

(a) Neither the Customer, nor their Agent may carry out alterations to extension/line wiring. The Customer reserves the right to make good any defects found on any alterations which have been carried out by the Customer, or their Agent, but at the Customer's expense at the Company's current charges.

(b) Any alterations required to the Equipment shall be notified to the Company not later than 5 working days prior to commencement of works.

(c) The Company may adjust the Annual Maintenance charge if the Equipment is altered. In this event the Customer shall become liable to variations in the charge applicable to the Maintenance Agreement from the completion date of the alterations in accordance with clause 1. (b) above.

(d) Any charges made by the Company for alteration work will be subject to the addition of applicable VAT or other tax.

## 4. THE CUSTOMERS RESPONSIBILITIES AND LIABILITIES

(a) The Customer shall notify the Company as soon as possible of any fault in the Equipment or of any work or service that may be necessary. The Company may at its option repair at its current charges faults or damage that have arisen due to the failure of the Customer to notify the Company promptly.

(b) The Customer shall not allow the Equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by the Company in relation to the operation and care of the Equipment. The Company, may at its option, repair at its current charges, faults or damage that have been caused by such moving, interference or tampering or by any failure by the Customer to comply with the Company's directions.

(c) Should any servicing, repair, replacement, alteration or addition be made to the Equipment other than by the Company or its authorised personnel, the Company may terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge.

(d) The Customer shall at its expense comply with all statutory requirements, bye-laws, obligations, regulations, recommendations or instructions relating to the use or testing of the Equipment. The Customer shall obtain and pay for any such licences, wayleaves, suitable private wires, jack sockets or any other items necessary for the operation of the Equipment. Suitable electric supplies where needed shall be provided and maintained by the Customer at its expense.

(e) The Customer shall give the Company and its representatives unhindered access to the Equipment and shall at its expense make available mains electric supply and any other facilities and co-operation as may be necessary for the proper and prompt servicing or repair of the Equipment under this Agreement.

(f) The Customer shall maintain an environment suitable to support efficient operation of the Equipment.

(g) If the Customer fails to make any payment due within 30 days in respect of the charges incurred by the provisions of this Agreement, interest will be charged at an annual rate of 4% above Barclays Bank PLC base rate, and will accrue daily from the due date until full payment is received.

(h) If the Customer fails to observe any other provision of this Agreement the Company shall be entitled to suspend all services until payment is made in full and shall further be entitled to terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge. Such termination by the Company shall be without prejudice to its own rights accrued at date of such termination.

## 5. LIMITATION OF LIABILITY

(a) The Company will indemnify the Customer:-

i) against liability for personal injury or death directly attributable to the negligence to the Company; and

ii) against physical damage (but not loss of any data) caused to the Customer's tangible property directly arising from the negligence of the Company in connection with the Company's servicing of the Equipment and shall be limited to £1,000,000 in respect of any one event, or events arising from a common cause.

(b) The Company's total liability to the Customer under the indemnities contained in this clause 5 shall not exceed 5 times the Annual Maintenance Charge for one or more related claims arising in any one twelve month period.

(c) The Company shall in no circumstances be liable for any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or BT or other network operators equipment and/or host PBX systems or computer hardware excluded from this Agreement.

(d) Subject to the provisions of this clause 5, the Company shall not be liable to the Customer for any loss, expense or damage of any kind (direct, indirect or consequential and whether arising from negligence or otherwise) in connection with the Company's servicing of the Equipment or otherwise.

(e) The Customer acknowledges that it is its responsibility to effect insurance cover in respect of all risks relating to the servicing of the Equipment not covered by the indemnity in clause 5.

## 6. GENERAL

(a) English Law

The Agreement shall in all respects be governed by English Law. The parties hereby irrevocably submit to the non exclusive jurisdiction of the English courts.

(b) Construction

The construction of this Agreement is not to be affected by any heading. Reference to the plural shall include the singular and vice versa.

(c) Entire Agreement

This Agreement constitutes the entire agreement between the parties, and there are no agreements or understandings between them and those set out herein.

(d) Waiver

Failure by the Company to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights. Any express or implied waiver by the Company of any Term or Condition of this Agreement or of any breach or default by the Customer may be terminated by the Company at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Company from acting upon that or any subsequent breach or default or from enforcing any Term or Condition of this Agreement.

(e) Force Majeure

The Company shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control including, but not limited to, Act of God, refusal of licence or other Government act, fire, explosion, accident, industrial dispute, or difficulty in obtaining materials or parts.

(f) Assignment and Transfer

The Customer may not assign the benefit of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of the Company.

## 7. CLASSES OF SERVICE AND PAYMENTS

(a) The class of service offered will be as indicated by the class of service code on the front, the definition of which is shown on the Company's "Class of Service Definitions List" (C.O.S), as indicated in clause 7.(c). Exclusions to maintenance cover are indicated in clause 2.

(b) Payments are to be made in full, including VAT and other applicable taxes to the address shown as the Company address within seven days of the date shown on the invoice. Liabilities to non-payment or delayed payment are indicated in clause 4.

(c) Class of Service Definitions:-

The three character C.O.S code is categorised as follows:-

Character 1 The Company will accept and respond to fault requests during the following hours:-

- A. 09.00 to 17.00
- B 08.00 to 18.00
- C 07.00 to 19.00
- D Any other specified 12 Hour period (Special Condition)
- E All 24 Hours

Character 2 The Company will accept and respond to fault requests during the following days:-

- A Monday to Friday (excluding Bank Holidays)
- B Monday to Saturday (excluding Bank Holidays)
- C All 7 Days (excluding Bank Holidays)
- D Monday to Friday (including Bank Holidays)
- E Monday to Saturday (including Bank Holidays)
- F All 7 Days (including Bank Holidays)

Character 3 The Company will use all reasonable endeavours to respond to fault requests within the following periods:-

- A 16 Working Hours
- B 8 Working Hours
- C 4 Working Hours

(d) Maintenance Agreement charges and multiplier/surcharge values are set by the Company in accordance with procedures which form part of the Company's approval status to BS EN ISO9002: 1994. These charges are classified as internal documents and as such are not for general issue.