

## ABBHEY TELECOM ONSITE MAINTENANCE AGREEMENT TERMS AND CONDITIONS

### 1. DEFINITIONS

- (a) The "Company" means Abbey Telecom Limited.
- (b) The "User" shall, where the context so permits, include both the party which contracts with the Company and the person or persons for whose benefit the Equipment is provided (the "End User") and the contracting party warrants, where it is not the End User, that it enters into the Agreement both on its own behalf and as agent for the End User.
- (c) The "Equipment" means the system central control unit and all cards within it as well as all proprietary system dependant digital handsets, further details of which are set out on the front sheet of this Agreement and any additional equipment for which the User requests maintenance under clause 2 (f) and which the Company agrees to maintain. Non system products including fax and answering machines and DECT handsets are only covered by the 12 month manufacturer's warranty and not by this Agreement.
- (d) The "Maintenance Charge" means the amount exclusive of VAT stated on the front sheet of this Agreement due and payable in consideration of the Services for a period of twelve months.
- (e) The "Services" means the maintenance, technical support and other services provided by the Company to the User on site for the duration of this Agreement, as referred to on the front page of this Agreement.

### 2. PAYMENT

- (a) The Maintenance Charge is due and payable to the Company strictly within fourteen (14) days of the Company's invoice therefor whether demanded by the Company in advance by direct debit or otherwise.
- (b) Interest shall be due and payable on all overdue amounts at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- (c) VAT where appropriate is payable in addition on all charges referred to in clause 2.
- (d) For the avoidance of doubt where the User chooses to pay other than by direct debit the Company shall be entitled to charge an additional fee of 5% of the Maintenance Charge.
- (e) Where the User has given an appropriate direct debit instruction to its bank, the User authorises the Company to debit its bank account, with an amount equal to the outstanding balance on the User's sales ledger account with the Company, during any period, where the User has failed to pay the Company on the due date as indicated on the Company's invoice supplied to the User.
- (f) The User acknowledges that by requesting additional services or equipment to be maintained after the commencement of this Agreement from the Company it will incur additional charges calculated according to the Company's current scale of charges and on a pro-rata basis according to the period of time for which such additional services or maintenance are required. It also acknowledges and intends that such services will be required through the initial term (or any subsequent term) of this Agreement. In the event that the User wishes to terminate such additional services three (3) months notice of termination shall be provided to the Company by the User who shall remain liable for all charges applicable to these additional services during this notice period.
- (g) Without prejudice to any other right or remedy that the Company may have, if the User fails to pay on the due date, the Company may suspend its performance of all Services until payment has been made in full.

### 3. CHANGE OF LOCATION

The User will not make any movement of the Equipment, nor remove the Equipment from the contracted location i.e. the Site Address Details shown on the front page of this Agreement without prior written consent of the Company, which consent shall not be unreasonably withheld. Where the Company consents to such relocation, the Company shall provide a relocation and installation service, the cost of which will be chargeable to the User in accordance with the Company's current scale of charges.

### 4. PRICE ADJUSTMENT

Without prejudice to clauses 5 (b) and 12, the Company may from time to time adjust the Maintenance Charge by advance notification in writing. Such adjustments shall be notified to the User in writing and not be made at less than yearly intervals.

Notwithstanding clause 12, the Company reserves the right to increase the Maintenance Charge at yearly intervals by the percentage increase (if any) in the rate of inflation during the previous 12 months as shown by The Consumer Prices Index including owner occupiers' housing costs (CPIH) published by the Office for National Statistics. Any such increase shall be notified to the User via invoice.

### 5. DURATION OF SERVICES

- (a) The Services will be provided during the initial term of this Agreement as accepted by the User. If the number of years has been left blank on the front sheet of this Agreement, the initial term shall be deemed to be one year. This Agreement shall commence on the date of acceptance by the Company and shall continue unless and until terminated in accordance with clause 6.
- (b) Should any Equipment become obsolete, the Company may notify the User that such Equipment shall no longer be covered by this Agreement from the date the Equipment becomes obsolete or such other date as is specified by the Company in its notice. In that case the Company shall reduce the Maintenance Charge from that date by such amount as it reasonably considers fair and shall notify the User accordingly of the reduced Maintenance Charge payable.
- (c) At any time during the remainder of the term of this Agreement, should the User replace the obsolete Equipment with the relevant upgrade recommended by the manufacturer or the supplier, the User may request cover under this Agreement for such upgrade by notice to the Company. If the Company accepts the User's request, it shall notify the User of the date cover for the upgrade will commence under this Agreement and of any increase required in the Maintenance Charge payable.

### 6. TERMINATION & CONTINUATION

- (a) Without prejudice to any other claims or remedies which the Company may have against the User, the Company may (without incurring any liability to the User) terminate this Agreement at any time by not less than 90 days written notice or immediately by written notice in any of the following circumstances:
  - i) if the User fails to comply with any of the terms of this Agreement (including failure to pay charges when due) or with the terms of any other agreement made between the User and either the Company or a distributor or representative of the Company; or
  - ii) if the User makes or offers to make any arrangement or composition with creditors or commits an act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the User, or if the User is a limited company any resolution to wind up that company is passed or if a receiver or administrative receiver is appointed over the whole or any part of such company's assets or if the Company reasonably anticipates that any of the events in this clause 6 (a) ii) are imminent; or

- iii) if the User does or allows to be done anything which in the opinion of the Company will or may have the effect of jeopardising the operation of the Services.
- (b) i) The User may terminate this Agreement by giving the Company written notice of its intention to terminate within the thirty day period preceding the expiry of the initial term. If a modem has been installed for remote maintenance purposes the User shall allow Abbey Telecom to attend site for its removal;
- ii) If the User fails to serve notice within the 30 day period referred to in clause 6 (b) i) this Agreement will automatically continue in force for consecutive periods of one year, or, in the case of an agreement which has an initial term of 3 or 5 years or such other term as is longer than one year, such longer period as is equivalent to such initial term, unless and until written notice is served within the thirty day period preceding the expiry date of any subsequent term or this Agreement is otherwise validly terminated in accordance with its terms;
- iii) In the case of termination of this Agreement by the User pursuant to clauses 6 (b) i) or ii), termination will be effective 90 days from the date on which the Company receives notice of the User's intention to terminate and the User will continue to be liable for Maintenance Charges and any other amounts accruing to the Company during such 90 day period;
- iv) The User may at any time give notice of immediate termination of this Agreement provided that a sum equivalent to that which the Company would be entitled to for maintaining the Equipment during the 90 day notice period, plus the annual amount of the Maintenance Charge divided by 12 and then multiplied by the number of months and part months of the term left to run between the date of the Company's receipt of the User's notice of termination and the expiry date of the relevant term must be paid for by the User, such payment to accompany the said notice;
- v) All notices under this clause 6(b) are only valid if they are sent by recorded delivery to the Company's registered office;

PROVIDED THAT notwithstanding the termination of this Agreement in accordance with this clause 6 (b), all other charges due under this Agreement shall remain payable by the User to the extent they are not included in the sums payable under clause 6 (b) iv).

## 7. LIMITATION OF LIABILITY

Note: This Condition does not apply to death or personal injury caused by the negligence of the Company or to any fraud or fraudulent misrepresentation by the Company.

- (a) So far as concerns loss or damage suffered by the User, the Company, its servants or agents shall be liable to the User (and then only to the limited extent set out below) only if and so far as such loss or damage is caused by the negligence of the Company's servants or agents acting within the course of their employment.
- (b) The Company and its servants or agents shall not be responsible to the User in any circumstances in respect of any loss or damage suffered by the User unless written notice is received by the Company within one month of the alleged loss or damage.
- (c) If, whether pursuant to the provisions set out herein or otherwise, any liability on the part of the Company, its servants or agents shall arise (whether under the express or implied terms of this Agreement, or at Common Law, in negligence or in any other way) for any loss or damage to the User arising out of or connected with the provision or purported provision of the Services, such liability shall in all cases whatever be limited to the payment by the Company and/or by or on behalf of its servants or agents by way of damage of a sum not exceeding the annual amount of the Maintenance Charge in respect of all and any claims arising during any one calendar year. The Company will not be liable for any loss of business, loss of profits or indirect or consequential loss.
- (d) In the event of any third party provider of goods or services to the User making a claim against the Company arising out of the subject-matter of this Agreement, whether arising out of any negligence, breach of duty or other wrongful act or omission by the Company, its servants or agents, or otherwise, in respect of loss or damage outside or beyond the liability of the Company to the User, as limited herein, then the User shall indemnify the Company against any such claim (and all costs incurred therein) to the extent the value of any such claim exceeds the total limit of liability of the Company to the User as set out in clause 7(c).
- (e) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## 8. NO FAULT FOUND

Where the User reports an apparent fault on the Equipment to the Company and, upon investigation by the Company the Equipment or its installation is found not to be defective, the Company reserves the right to make a charge for the investigation and/or any call-out. Any such charge will be at the Company's normal rates.

## 9. ASSIGNMENT

This Agreement is personal to the User and may not be assigned or transferred without the prior written consent of the Company. The Company may at any time assign this Agreement to any other person or company authorised by the Company.

## 10. FORCE MAJEURE

Neither party shall be liable for any failure to perform its obligations hereunder if such failure arises from any act of God, war strike, lockout, or other labour dispute, riot, civil commotion, fire, lightning (or other electrical spike), flood, drought, failure of a utility service including a telecommunications network and the internet, legislation or other causes beyond the reasonable control of the party concerned.

## 11. GOVERNING LAW AND JURISDICTION

(a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English law.

(b) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

## 12. MODIFICATIONS OR VARIATIONS

This document contains the full terms of the Agreement between the parties. No modifications or variations of this Agreement shall be valid unless confirmed in writing by a director of the Company on its behalf and an authorised representative of the User save that the Company may from time to time make and shall notify the User accordingly of such modifications or variations to this Agreement as may be reasonably necessary to reflect any circumstances which are beyond the Company's reasonable control and which are continuing or (where terms relating to price and payment or the apportionment of liability between the parties are not being changed) as may be reasonably necessary to reflect any changes in the administration of the Company's business or its method or means of delivery of the Services provided that the Company shall give the User at least one month's prior notice of any modification or variation to be made which is likely to be of material detriment to the User and in that case the User shall have the option to withdraw from this Agreement without penalty at any time during such notice period by notifying the Company accordingly.

The Company may notify the User of any modification or variation to be made to this Agreement by posting such modification or variation on the Company's website.

## 13. MISCELLANEOUS

### Representations

The User agrees that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all understandings or prior agreements oral or written, and all representation or other communications between the parties relating to the subject matter of this Agreement.

### Severance

(a) If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

(b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### Statutes

In this Agreement:

(a) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and

(b) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

### Quality of Service

The Company reserves the right to record telephone calls for quality of service purposes.

### Notices

i) Any notice hereunder sent by the Company in the first class post shall be deemed received by the User forty eight (48) hours after the date of first class pre-paid postage posting to the User at the address given overleaf, or to such other subsequent address as may have been properly notified to the Company.

ii) The User shall send formal notice of either a Change of Billing Address or Termination by Recorded Delivery Post to the Company's Head Office address.

### Agreement unsigned

**Notwithstanding that the front sheet of this Agreement may not have been signed by the User or the Company, a legally binding contract upon the terms of this Agreement shall be deemed to have come into effect between the parties upon the sooner of the Company commencing to supply the Services i.e. putting the User on maintenance cover pursuant to the User's purchase order or request and the User paying the Maintenance Charge and any applicable VAT.**

### User terms

For the avoidance of doubt the terms of this Agreement shall apply to every contract formed between the parties to the exclusion of any standard terms of purchase or similar which the User seeks to impose on or incorporate into such contracts at any time, whether such terms are supplied with the User's purchase orders or separately.

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