

# Conditions for IPPBX Maintenance



YOUR AGREEMENT WITH US (this "AGREEMENT") IS MADE UP OF THE FOLLOWING DOCUMENTS:

- (i) THESE CONDITIONS;
- (ii) THE SERVICE AGREEMENT;
- (iii) THE ORDER SCHEDULES;
- (iv) THE RELEVANT TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU;
- (v) THE CONDITIONS FOR COMMUNICATION SERVICES; AND
- (vi) ANY OTHER RELEVANT PRODUCT SPECIFIC CONDITIONS.

## 1. General

"The Agreement" means this installation and maintenance agreement and the Schedule(s) to it, setting out the equipment which will be installed and entered into or under the maintenance agreement.

"Contract Date" means the date entered in the Agreement.

The "Customer" means the person or company whose details are set out in the Agreement.

"Equipment" means all or any items of equipment supplied by us and identified in the Order Schedule(s) to the Agreement.

"Optimum Functionality" means operation without material defect (and 'material defects for the purposes of the Agreement shall exclude defects arising by reason of the age of the Equipment, wear and tear on the Equipment, or the connection to, or use with the Equipment of any hardware or software not supplied by, or approved of in writing.)

## 2. Duration of Agreement

The Agreement shall subject as provided in these terms and conditions remain in force for the period set out on the Service Agreement or Order Schedule and commencing on the Contract Date ("Initial Period"). The parties may agree in writing prior to the expiry of the Initial Period to extend the Agreement for a further renewable 12 month term, which may be terminated by either party giving three months written notice of termination to commence on 1st January, 1st April, 1st July or 1st October.

## 3. Charges

a) The maintenance charges set out in the Agreement are those in effect at the Contract Date and entitle the customer to maintenance services (as defined in clause 4 below) at the locations and on the Equipment specified in the Schedule(s) to the Agreement. These charges are subject to change by us with effect from the 1st anniversary of the Contract Date or at any time thereafter upon not less than one quarter's prior written notice thereof being given to the customer, commencing on 1st January, 1st April, 1st July or 1st October.

b) Where during the continuance of the Agreement the Customer requests and we carry out changes in the specifications, attachments or features of any part of the equipment the charge specified in respect of that Equipment may at our discretion be adjusted.

c) Equipment and/or additional services added to the Agreement during the contract term shall be charged pro-rata from the time of addition up to the next annual payment date, or date of termination of the Agreement if earlier.

d) If the Customer directs us to maintain equipment at any mainland UK location over 40 miles from the nearest field engineering location, the accessibility of the location will be taken into account prior to a response time being agreed.

Response to offshore locations will be decided on a case by case basis and carry an appropriate surcharge to cover any additional costs involved.

e) The maintenance charges shall be paid annually in advance the first payment being due on or before the Contract Date and any other payments due shall be payable upon Customer's receipt of invoice. In the event that the Customer shall cancel or wish to break the contract during the contract term no charges shall be refunded notwithstanding that the customer may no longer make use of the service.

## 4. Maintenance Services

a) Where, in our opinion, Equipment requires routine attention or modification to maintain Optimum Functionality, we will specify the duration of and dates on which such routine work will be carried out.

b) In addition to the routine maintenance (if any) carried out on the Equipment, we will carry out on-site maintenance of Equipment which is notified by the Customer as failing to perform at Optimum Functionality, provided that the failure cannot be diagnosed and corrected by giving a total of 30 minutes on line telephone technical support, or within 45 minutes of notification of the failure by the Customer, whichever shall be the sooner.

c) Where the reported Equipment failure is not remedied after 3 hours of initial telephone technical support and has been confirmed as a hardware fault by our technical staff, we will make all commercially reasonable endeavours to ensure the arrival of a service engineer or replacement hardware at the Equipment site before the expiry of the period specified in the Agreement, provided always that (with the sole exception of contracts for full 24 hour maintenance) time falling after 5.30pm and before 9am the following day shall be disregarded in the calculation of the period expired.

d) The Customer shall not be invoiced for the cost of any replacement Equipment or parts, engineering time or additional labour or material supplied by us to the Customer unless the costs arise out of the circumstances described in clause 6 below.

e) Any Equipment or part removed and replaced free of charge shall become our property.

f) Maintenance services or repairs which fall outside the scope of the Agreement may be carried out by us at Customer's request subject to the prior agreement in writing as to our charges.

g) We shall retain the right to use for the purposes of replace, supporting or swap out the Equipment under maintenance with equipment that shall not have a lesser specification

## 5. Warranties

a) The Customer warrants that: -

i) the Equipment will not be operated in an abnormal or improper manner or by incompetent personnel, or under environmental conditions detrimental to the correct operation of the Equipment.

ii) the Customer has complied with any applicable provisions of the Health and Safety Legislation.

iii) Our employees or subcontractors will have full access to the Equipment for the purposes of discharging our obligations under the Agreement.

b) We may subcontract installation and maintenance services to a third party and warrants to the Customer that the

maintenance services will be supplied with reasonable care and skill and by appropriately qualified personnel.

### 6. Liability

- a) Each party to the Agreement shall maintain adequate and appropriate insurance.
- b) We shall not be liable to the Customer in connection with or arising out of the Agreement, or the performance or non-performance of the maintenance services, except to the extent that the loss or damage results solely from misrepresentation by, negligence of, or breach of the Agreement or other default by us, its servants or agents, in which case such liability shall be subject to the exclusions and limitations set out in these terms and conditions.
- c) Our liability for any loss or damage however caused, in connection with or arising out of the Agreement or the performance or non-performance of the maintenance service will
  - i) in the case of loss of or damage to tangible property, caused by our negligence be limited to £1,000,000 in respect of any one claim or series of claims;
  - ii) in the case of all other claims in the aggregate, be limited to the value of the contracts under which a breach is alleged to have occurred or £50,000, whichever is the lesser.
- d) Notwithstanding clause 4(c) above we shall not be liable to the Customer or to any other person for
  - i) indirect or consequential loss or damage however caused
  - ii) any loss of use, operating time, data, business, profits, revenue, anticipated savings, or for any inconvenience to the Customer, however caused;
  - iii) any claim for loss or damage, unless made with reasonable details in writing to us no later than 1 month (or such longer period as may be reasonable in the circumstances) after the date the claimable event first comes or ought to have come to the attention of the Customer its servants or agents;
  - iv) the non-performance of its obligations where the proper performance of those obligations is hindered or delayed by circumstances or events beyond our reasonable control.
- e) The Customer will be liable for
  - i) the costs of replacement Equipment or parts, travel costs, engineering time, additional labour and materials arising from
    - A) electrical work required, other than to the Equipment for the purpose of its maintenance
    - B) damage resulting from accident, transportation, theft, fire, water damage, neglect, misuse or Act of God including lightning strike
    - C) failure by the Customer, his servant, or agent to maintain the installation environment recommended for the Equipment
    - D) unauthorised alterations to the Equipment, or the connection of the Equipment to any device not previously approved by us in writing
    - E) Us complying with the Customer's request for on-site maintenance of Equipment which, in our reasonable opinion operates correctly, or would so operate if properly used, or, if used as part of a network in which all other devices were functioning properly
  - ii) the costs of
    - A) supplying consumable accessories (including but not limited to ribbons, tapes and disks)
    - B) refinishing the Equipment
    - C) relocation of, and consequential changes in specification to

the Equipment

- D) all maintenance of printers, unless we agree to carryout such maintenance, subject to agreement of the additional maintenance charge
- E) adding to or removing from the Equipment any other device
- iii) Any additional costs, disbursements or expenses involved in
  - A) Maintaining the Equipment at a location other than that specified in the Schedule(s) to the Agreement although we shall not be obliged to maintain such relocated Equipment, and if we do so, may adjust the maintenance level of the Equipment to reflect increased response time required
  - B) Of maintaining any device of Equipment not specified in the Schedule(s) to the Agreement
- f) the term "however caused" means arising by reason of breach of contract, misrepresentation, negligence or other tort, breach of statutory duty or other wrongful act or omission, deliberate or not, however fundamental the result.
- g) nothing in the Agreement or these terms and conditions shall affect the parties' liability for
  - i) death or personal injury caused by negligence;
  - ii) fraudulent misrepresentation or other fraud; or
  - iii) any breach of any obligations imposed by section 2 or 7 of the Supply of Goods and Services Act 1982.
- h) save as set out in these terms and conditions all other express or implied terms, conditions and warranties, whether statutory or otherwise, are excluded to the fullest extent permitted by law.
- i) the Customer agrees to indemnify us at all times hereafter against all claims demands costs (including costs of management time, and full legal costs) and expenses in excess of the liability expressly accepted by us in these terms and conditions.

### 7. Suspension

- a) We may suspend or delay the performance of any or all of its obligations hereunder if the Customer is in breach of (customer's warranties given in clause 5.a) above or if the Customer, or its subsidiary or associated company, has failed to make due and proper payment of any sum due to us.
- b) We may recover any Equipment should the Customer fail to make the payments in accordance with clause 3.1a.

### 8. Termination

- a) We may terminate the Agreement without notice if any sums due and payable by the Customer or its subsidiary or associated company, shall remain unpaid for a period of 14 days after becoming due, whether such sum is due in respect of the Agreement or otherwise.
- b) Either party may terminate the Agreement if, after serving a written notice on the other party which specifies with reasonable details the other party's breach of the Agreement, and states an intention to terminate the Agreement if the breach is not remedied, that breach is not remedied within a period of 30 days following service of the notice. Notice shall be served on the Customer at the address given in the Agreement, or at such other address as may have been specified by the Customer to us in writing. Such termination shall be without prejudice to the prior existing rights of either party hereunder.

### 9. Entire Agreement

The Agreement contains the entire Agreement between the parties's with respect to the subject matter hereof. There are

no understandings, agreements, representations or warranties expressed or implied in respect of the Agreement or of the services to be furnished thereunder except those specifically referred to in these terms and conditions. We shall not be bound by the terms of any purchase order or other document whatsoever issued by the Customer in connection with the Agreement.

### **10. Severability**

In the event that any part of the Agreement, Schedule(s), or terms and conditions shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severable from the remaining terms conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **11. Assignment**

The Customer may not assign its rights or obligations under the Agreement except with our prior written consent.

### **12. Law and Jurisdiction**

The Agreement shall be subject to and interpreted in accordance with the laws of England and Wales and the party's hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in all matters arising out of the Agreement.