

MAINTENANCE AGREEMENT TERMS AND CONDITIONS

1. MAINTENANCE PERIOD AND CHARGE

(a) This Agreement shall start on the commencement date specified overleaf and shall continue for the minimum term as stated on the face of this Agreement and thereafter from year to year (each year starting on the anniversary of the commencement date) until terminated by notice in writing by either party to the other, such notice to be a minimum of 90 days prior to the next anniversary of the commencement date. Such notice shall be deemed to be received within a week of being posted by recorded delivery to the last known address of the party to whom it is given.

(b) The Annual Maintenance Charge for the initial period of twelve months shall be the charge specified on the front page of this document ("the front"). For each subsequent year during the continuation of this Agreement the Annual Maintenance Charge shall be fixed according to the Maintainers current charges at the beginning of that year for the type and quantity of equipment (the Equipment) specified on the front. The annual maintenance charge may be increased at any time in any one year by a rate not exceeding ten percent of the present annual charge, without notice. 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) If notice is given as above **before** the expiry of the minimum term shown then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.

If notice is given as above **after** the expiry date of the minimum term shown then payment is due up to the end of the current year of cover.

If notice is **not given** as above and the contract is still before the last year of the minimum term then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.

If notice is **not given** as above and the contract is either in the last year or after the minimum term of the contract then payment is due up to the anniversary of the following year of cover.

Additionally, if the contract is terminated without notice then any discount which reduced the amount paid in the first year will be repayable.

2. MAINTENANCE AND REPAIR

(a) During the period of the Agreement, in consideration of the payment of the maintenance charge, the Maintainer shall as soon as is reasonably practicable after notification in accordance with paragraph 4 below provide a Maintenance Engineer to carry out during its normal business hours any maintenance of and repairs and replacements to the Equipment that may be reasonably requested by the Customer and shall carry out free of any extra charge any maintenance repairs and replacements (including the provision of any necessary materials and spare parts) as shall be necessary as a result of fair wear and tear arising from the proper operation of the Equipment. Any maintenance repairs or replacements or customer visits caused other than by fair wear and tear may be carried out at the Customer's expense at the Maintainer's current charges. The response times for these faults will not be guided by the service level shown on the front of this agreement. All maintenance, repairs or replacements may be carried out at the premises where the Equipment is installed or elsewhere at the option of the Maintainer.

(b) This agreement does not cover the following items unless they are specifically detailed in the equipment section overleaf:

(i) Overhead, underground, external and internal cabling.

(ii) Two wire telephone handsets.

(iii) Call loggers, Voice Mail, DECT Phones & Equipment, battery back up/UPS, CD/music on hold players, replacement batteries and other ancillary equipment.

3. ALTERATIONS TO EQUIPMENT AND EXTENSION WIRING

(a) All alterations to apparatus and extensions to wiring (including removal and reinstallation to a new site) shall only be carried out by an installer authorised by the Maintainer

(b) Any alterations to Equipment and wiring shall be notified to the Maintainer within 14 working days of the commencement of the works.

(c) The Maintainer may adjust the Annual Maintenance Charge if the Equipment is altered. In this event the Customer shall sign a supplementary contract (to include the new Equipment) in accordance with clause 1 (b) above.

4. THE CUSTOMER'S RESPONSIBILITIES AND LIABILITIES

(a) The Customer shall notify the Maintainer either orally or in writing as soon as possible of any fault in the Equipment or of any work or maintenance that may be necessary. The Maintainer may at its option repair at its current charges faults or damage that have arisen because of the failure of the Customer to notify the Maintainer 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 Maintainer in relation to the operation and care of the Equipment. The Maintainer 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 Maintainer's directions.

(c) Should any maintenance, repair, replacement, alteration or addition be made to the Equipment other than by the Maintainer or its authorised installer, the Maintainer 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, byelaws, 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 Maintainer 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 maintenance or repair of the Equipment under this Agreement.

(f) The Customer shall maintain an environment suitable to support efficient operation of the Equipment. The customer is responsible for any damage caused by electrical surges.

(g) If the Customer fails to observe the provisions of this Agreement, the Maintainer may terminate it with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge.

(h) The customer shall be liable for any costs relating to telephone calls, malicious or otherwise made, through the telephone system either from within the customer's premises or via an external source gaining access and dialling out.

5. LIMITATION OF LIABILITY

(a) The Maintainer will indemnify the Customer:

(i) (where the United Kingdom Unfair Contract Terms Act 1977 applies to this Agreement) against liability for personal injury or death directly attributable to the negligence of the Maintainer; 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 Maintainer in connection with the Maintainer's maintenance of the Equipment.

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

(c) subject to the provisions of this paragraph 5 the Maintainer 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 Maintainer's maintenance of the Equipment or otherwise.

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

(e) The Customer acknowledges that the price of the services reflects the limitations contained in this clause 5. The Customer shall effect insurance cover in respect of all risks relating to the services which are not covered by this Agreement or the liabilities which are not accepted under this clause 5.

(g) The Maintainer does not accept any responsibility for system faults caused by either telephone area code changes or as a result of the Millennium / Year 200 date issues.

6. ENGLISH LAW

(a) This 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) Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction within Gloucestershire.

(c) The submission by the parties to such jurisdiction shall not limit the right of the Maintainer to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.

(d) Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 1(a) above.

(e) In the event that the Customer is resident outside England its address for service in England shall be such service nominated in this Agreement and any time limits in any proceedings shall not be extended by virtue only, of the foreign residence of the Customer.

7. GENERAL

(a) 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.

(b) Entire Agreement

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

(c) Variation

Any variation to this Agreement shall only be binding if it is recorded in a document signed by an authorised representative of the Maintainer.

(d) Waiver

Failure by the Maintainer to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

(e) Any express or implied waiver by the Maintainer of any term or condition of this Agreement or of any breach or default by the Customer may be terminated by the Maintainer at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Maintainer from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Agreement.

(f) Force Majeure

The Maintainer shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control.

(g) 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 Maintainer.

(h) Agent

If the dealer/installer pays any part of this contract, he is acting as agent on behalf of the customer.

(i) Payment

Failure to pay any outstanding invoices that are due will result in maintenance being suspended.