



S & M SOLUTIONS LIMITED

S & M Solutions Ltd

Conditions for Maintenance of Equipment

1. General

- 1.1 These are the Conditions upon which S & M Solutions Ltd (The Company) is prepared to deal with its Customer (The Customer). Definition of equipment (The Equipment)
- 1.2 These Conditions embody the entire understanding of the parties and supersede any prior promises, representations or undertakings.
- 1.3 The wiring between the Network Connection Point and any Extension/Data socket is covered by this agreement but the cost of any repairs to the wiring (unless The Customer elects to have the repairs done by a third party) shall be borne by The Customer at The Company's current charging rates for work and materials from time to time in force.

2. Duration.

- 2.1 Subject to the provisions of paragraph 9 providing for earlier termination, this Agreement shall commence on the Commencement Date shown on the face of the Agreement (Commencement Date) and shall continue:-
 - 2.1.1 Where an initial period is shown on the Agreement (The Initial Period) for the Initial Period and thereafter from year to year unless or until terminated by Either party giving the other not less than 30 Days prior written notice sent by recorded delivery expiring at or any anniversary of the end of the initial period, or
 - 2.1.2 In all other cases, from year to year unless or until terminated by either party giving to the other not less than 30 Days prior written notice sent by recorded delivery. Expiring on any anniversary of the Commencement Date.

3. The Customers Obligation

- 3.1. The Customer agrees
 - 3.1.1. To pay the initial Annual Maintenance Charge for the Maintenance Service (as hereafter defined) as specified on the Maintenance Agreement (The Annual Charge for "The Equipment" (being The Equipment described in the Maintenance Agreement) on or before the Commencement Date and thereafter annually or appropriate) before the anniversary of the Commencement Date.
 - 3.1.2 To pay any additional payment that may become due during the period covered by the annual charge in accordance with Clause 5 hereof any such further Payment to be paid by the end of the month following the date of The Company's invoice thereafter. Subject to agreed payment terms.
 - 3.1.3 To pay all other charges made by The Company in accordance with the provisions of the Agreement any such further costs or charges for which the Customer shall be liable hereunder shall be paid by the end of the month following the date of the Companies invoice therefore.
 - 3.1.4 To notify The Company immediately (such notification to be confirmed forthwith by fax or letter if made by telephone or email) of any fault in The Equipment or any repair which may be necessary, and to allow The Company's engineer to have full and free access to The Equipment The Customer providing adequate working and storage space and such other facilities as The Company's engineer may reasonably require.
 - 3.1.5 To ensure that the environmental and safety conditions at the address on the Maintenance Agreement being the site of The Equipment (The Site) (approved by The Company and/Or Network Operator) are adequate at all times and comply with all the relevant statutory and other legal requirements.
 - 3.1.6 To pay The Company's charges for reprogramming and/or service visits as a result of a programming error or service visits where the fault is not a fault in The Equipment or if The Equipment is reported as faulty and proves not to be so.
 - 3.1.7 Not to assign the benefit of this Contract without previous written consent from The Company.
 - 3.1.8 To indemnify The Company against all liabilities costs and claims of whatever nature from third parties in the event that The Company is unable to keep The Equipment in good working order due to causes within the control of The Customer or where The Customer allows The Equipment to be altered adjusted added to or interfered with by persons other than the Company's authorised engineers or Agents.

4. Interest and VAT.

- 4.1. It is hereby agreed and declared:-
 - 4.1.1. The annual charge and any other amounts payable under the terms of this agreement are Exclusive of VAT or any other similar levies or duties which will be added or Charged on invoice at the appropriate rate.
 - 4.1.2. Interest at an annual rate of 4% above HSBC Plc base rate from time to time calculated on a daily basis on any sum not paid on the due date until payment.

5. Adjustment and Variation of the Maintenance Charge

- 5.1 The annual charge may be adjusted at anytime to reflect the reasonable costs of any change made to the requirement of the Network Operator affecting the Provision of the Maintenance Service.
- 5.2 In addition the Company may upon 30 Days prior written notice to The Customer give notice of an increase in the Annual Charge. Such adjustments shall not be made at intervals more frequently than one in any one 12 Month period and not without prior agreement with The Customer.

6. The Companies Obligations

- 6.1. Subject to the conditions set out below and strictly subject to the payment of the annual charge by The Customer, The Company shall during the term of this agreement carry out in the manner set in the Service Level Agreement (if one has been agreed appropriate) such repair and replacement work resulting from fair wear and tear and/or faulty workmanship or materials as is necessary to maintain The Equipment therein in efficient working order (The Maintenance Service)
- 6.2. The obligations of The Company to perform the Maintenance Service will be subject to the following conditions.
 - 6.2.1. The company shall be under no liability in respect of:-
 - 6.2.1.1. Making good any defects in the Electricity Supply, Network Services and connections and/or host PABX/Network Server or LAN Hardware.
 - 6.2.1.2. Any failure or defective working or operation of The Equipment caused due to any fault, failure or change in the Electricity Supply and/or Network Services and connections and/or host PABX/Network Server or LAN Hardware.
 - 6.2.1.3. Any failure or defective working caused directly or indirectly by Meteorological conditions including electrical storms.
 - 6.2.1.4. Any software incorporated into The Equipment.
 - 6.2.2. The Customer shall duly notify The Company of a fault or necessary repair in accordance with clause 3.1.4. And according to the Service Level agreement.
- 6.3 At the request and expense of The Customer and only where The Company in its absolute discretion elects so to do The Company shall carry out other work of repair and maintenance or replacement to The Equipment apart from that described in clause 6.1

7. Performance

- 7.1 Subject to the provisions of this Agreement The Company warrants that it will exercise reasonable skill in the performance of its obligations hereunder.
- 7.2 The Company itself gives no undertaking or guarantee in respect of the description quality or fitness for purpose of any materials used in the performance of its obligations hereunder but does undertake that, in the event that any defect in materials is notified to it within a reasonable time of work being carried out by it will use its reasonable endeavours to secure recompense from its own supplier in respect thereof and it will pass on to The Customer the benefit of any guarantees or indemnities given to it thereof by the supplier.
- 7.3 Save as provided in paragraph 7.1 and paragraph 7.4 thereof
 - 7.3.1 All conditions and Warranties express or implied as to the service to be provided by The Company or the quality and fitness for any purpose of any materials used by The Company are hereby expressly excluded, and
 - 7.3.2. The Company shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising, which may be suffered by The Customer at any time.
- 7.4 The foregoing provisions of this condition shall not apply to services provided to persons who deal as consumers (as that expression is so defined in section 12 of the Unfair Contract Terms act 1977), unless the contract is an international supply Contract (as described in section 26 of that act).

8. Force Majeure

The Company shall not incur any liability for any loss or damage whatsoever if it is prevented from or hindered in providing the Maintenance Service through any circumstances beyond its control including (but not limited to) industrial action, war, terrorism or fire

9. Default and Termination

- 9.1 The Company shall have the right at any time by giving notice in writing to The Customer to terminate this Agreement forthwith in any of the following events.
 - 9.1.1 If The Customer commits a breach of any of the Terms and Conditions of this Agreement and fails to remedy the same within 10 Days of written notice requiring The Customer to do so
 - 9.1.2 If The Customer being a Company enters into liquidation (whether compulsory or voluntary) or Administration or Administration Receivership or being an individual is made subject of Bankruptcy order or in either case compounds with its creditors or has a receiver appointed of all or part of its assets or takes or suffers any analogous procedure under any law of jurisdiction
 - 9.1.3 Either party to be able to give notice if any party fails to comply with the terms & Conditions set out herein.

10. Governing Law.

The laws of England govern this Contract and English Courts (to the jurisdiction of which The Customer hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes arising out of it

Schedule 1

Standard Cover: In response to The Customers request The Company shall at the earliest practical opportunity cause a maintenance engineer to attend to inspect and or repair The Equipment during The Company's normal working hours.
The Company will endeavour to ensure that all faults will receive attention within 16 Working Hours unless otherwise stated on the agreement and a repair of non-intermittent faults in The Equipment within 3 Working Days for Customers within 100 Miles of the Head Office.

Schedule 2

(Amendments) If applicable see separate sheet. A Company Director and/or the Installation Manager must sign these off.