

VENTURE PBX SALES & MAINTENANCE – TERMS & CONDITIONS

EFFECT

- a. These terms and conditions along with the terms detailed in the Framework or Service Agreement shall prevail over any proposed or implied by trade custom or practice or any representation oral or written made by Venture or its employees or agents (hereafter called 'the Company').
- b. The Company's failure to object to any other terms proposed by 'The Subscriber' shall not be deemed a waiver of that condition.
- c. This Agreement becomes effective when signed by a Director of 'The Company'.

2. TERMS

This Agreement shall continue for the same minimum terms as stated in the Framework or Service Agreement and upon expiry the minimum term will automatically continue from year to year unless and until terminated by ninety days prior written notice given by either party to expire on any anniversary of this Agreement. Notwithstanding this the Company may terminate this Agreement in whole or part for any breach of the Subscriber.

3. EXTENT OF MAINTENANCE SERVICES

- a. Throughout the term of this Agreement the Company shall during normal working hours, maintain the equipment in efficient working order and shall provide the appropriate Maintenance Service listed in the Framework or Service Agreement, subject to the provisions of the Framework or Service Agreement and these terms and conditions the Company will not effect repairs or maintenance necessitate other than by fair wear and tear without further charge or replacement.
- b. The maintenance Service does not include:
 - a) Any maintenance of the system to meet any changes in the Subscriber's requirements or the standards or requirements of British Telecom or other relevant network operator.
 - b) Any electrical system or other work external to the system.
 - c) Relocation and re-installation of the system
 - d) The cost of repair or replacement or extra service time made necessary by accidental damage, misuse and negligence or failure to observe the Company's recommendations or those British Telecom or other relevant network operator or for causes external to the system such as, but not limited to failure or fluctuation of electrical power or air conditioning or any defect or failure in the relevant public/private network.
 - e) Line wiring, unless the Company agrees to take over responsibility for it.
 - f) Requests to re-attend the site at the Subscriber convenience the Company reserves the right to charge the Subscriber for any such extra services and costs.
- c. If the equipment is not (immediately prior to the commencement of this Agreement)
 - a) Already maintained by the Company or
 - b) Within the scope of an express warranty given by the Company it will inspect the equipment and shall undertake such repair work as may be necessary to put the equipment in good working order. The Subscriber shall pay for such inspection and repair at the Company's then current charges. Any future work due to component failure shall also be charged for.
 - d. If the Company reasonably forms the opinion that the equipment or any part of it can no longer be economically maintained on site to the necessary high standards, it will notify the Subscriber to the Company's estimate of the cost of reconditioning or repairing all or part of the equipment. Should the Subscriber fail to make the system available for reconditioning or replacement or the parties fail to agree on the appropriate charges, then the Company shall be entitled by written notice to withdraw the Maintenance Service from the date of such receipt of such notice by the Subscriber.
- e. All programming, training, cabling, additional works and out of hours work will be chargeable at the Company's then current charges.

4. CUSTOMER RESPONSIBILITIES

- 4.1 The Subscriber is responsible for ensuring that the environmental conditions at the installation site (approved by the Company and/or British Telecom or other relevant network operator prior to installation) are maintained at all times.
- 4.2 For the purpose of providing Maintenance Service the Company's Technical Staff shall have full free and timely access to the equipment and the Subscriber shall provide adequate working and storage space, and other such facilities as the Technical Staff may reasonably require.
- 4.3 The Subscriber shall observe any common law or statutory requirements relating to a healthy and safe place of work.
- 4.4 The Subscriber shall to the extent that the Company is not responsible, maintain the equipment in good repair and notify the Company immediately for any serious loss or damage which occurs.
- 4.5 The Subscriber shall keep the equipment comprehensively insured to full replacement value and hold any proceeds of such insurance in trust for the Company.
- 4.6 The Subscriber shall keep the equipment in its possession and in the United Kingdom and not move it from the location given overleaf without the Company's prior written consent which will not unreasonably be withheld the Company will charge for such a move if the Subscriber fails to notify the Company.
- 4.7 The Subscriber shall indemnify the Company in full against any loss or damage it suffers as a result of entering into this Agreement with the Subscriber including legal fees incurred in enforcing it.
- 4.8 If the equipment is party to a Finance Agreement for Rental/Finance then the Subscriber shall return the equipment to the Company when the hiring terminates if the Subscriber fails to return the equipment then the Company or its representatives may enter any premises where the equipment may be located for the purpose of recovering it which will be charged for the Company's then current charges.
- 4.9 The Subscriber shall arrange at its own expense for the provision of any equipment or services by British Telecom or other relevant network provider which may be necessary for the installation and operation of the equipment, including all charges for the provision of lines or service.
- 4.10 The Subscriber shall notify the Company immediately of any fault or want of repair in relation to the system and provide the Company's agents or employee's access at all reasonable times to maintain, repair or inspect the equipment.
- 4.11 The Subscriber shall not permit or suffer to permit any third party whether it be an agent or employee to carry out any works or repairs of whatever nature to the equipment without the express written consent of a Director of the Company. The Company shall not be required by the Subscriber to carry out any such repairs free of charge to the equipment where the equipment has been maintained or damaged by the Subscriber its agent or employee in breach of this condition.

5. LIMITATIONS

- 5.1 Unless otherwise agreed in writing by the Company the system must not in any circumstances be altered or interfered with except by the Company's Technical staff.
- 5.2 The Company will not be liable for failure to provide the Maintenance Service if the failure results from any of the following (whether happening in the United Kingdom or elsewhere) mainly 'force majeure' such as but not limited to Act of God, refusal of license or other governmental acts, fire, explosion accident, industrial dispute, difficulty in obtaining materials or any cause beyond its reasonable control.

6. LIABILITY

- 6.1 a) The Customer accepts all the Company's Standard Terms and Conditions of Sale which are available for inspection.
- b) All deposits are non-refundable.
- 6.2 The Company's liability in terms of service will be in lieu and to the exclusion of all other warranties or conditions express or implied the Company excludes liability for any loss or damage (including consequential loss and loss of profit) which the Customer may suffer as a result of purchasing the equipment and in any other way.
- 6.3 Without limitation to the foregoing the Company specifically excludes for any loss or damage incurred by the Subscriber arising out of:
 - a) Any delay in the performance of any work involving installation, repair, alteration, replacement or removal of the equipment or part of it.
 - b) The Company's failure to repair damage caused other than by fair wear and tear.
 - c) Any defective equipment or service provided by British Telecom or any other relevant network provider.
 - d) Defects in or failure of the electricity supply.

7. ADJUSTMENT

- 7.1 The maintenance charge may be adjusted at any time in the event that any change is made to the requirement of British Telecom or any other relevant network operator affecting the provision of the Maintenance Service Terms.
- 7.2 The Company reserves the right at any time to vary the terms of the Agreement relating to the charges by giving 30 days prior notice. In the event of a price increase greater than 12.5% other than as a result of changes in exchange rates, taxation the Subscriber shall be entitled to cancel the Agreement by giving notice to the Company in writing provided that such notice be received before the effective date of said increase.

8. CONDITIONS

- 8.1 The company reserves the right to make a charge for the time and expenses incurred by its personnel being called out due to faults not on the equipment (e.g. British Telecom or other network operator line faults, power supply fluctuations, faults in the line wiring not forming part of the system etc.) or if the equipment is reported faulty and proves not to be so.
- 8.2 In addition to the maintenance charge the Subscriber shall pay to the Company all additional charges for maintaining the equipment where maintenance is due to any circumstances other than wear and tear.
- 8.3 Any additional payment that may become due under the terms and conditions of this Agreement shall be paid within 30 days of the date of the Company's Invoice.
- 8.4 The Company shall be under no obligation to provide the Maintenance Service so long as any sum due is in arrears for more than 30 days and any additional charges incurred by the consequent delay in carrying out the Maintenance Service shall be paid by the Customer including the cost of recovery of such overdue sum.
- 8.5 In the event of default by the Subscriber of this agreement, or any related lease or rental agreement in respect of the equipment whereby the leasing company is acting on behalf of the Company in collecting revenue, then the Company shall be at liberty to terminate this agreement whereupon the Subscriber shall pay the Company the compensation reserved in 9b) below.

9. TERMINATION

The Subscriber may give notice to terminate the Agreement before the minimum term as stated in Clause 2 and will immediately pay:

- a) All outstanding invoices;
- b) An amount for compensation equal to the remaining term for the loss of future Service Revenue less a discount of 5% for early settlement.

10. LEGAL CONSTRUCTION

The Agreement shall be governed by English Law. The legal construction of these conditions shall not be affected by their headings.

11. INVALIDITY

If any provision of the Agreement becomes invalid, illegal or unenforceable the other provisions of the Agreement shall not be affected thereby.

12. ENTIRE AGREEMENT

The Agreement with the Framework or Service Agreement sets forth the complete Agreement between parties. No amendment or modification of the agreement will be effective or binding unless it is in writing signed by the duly authorized representatives of the parties.

13. ASSIGNMENT

The Agreement shall ensure for the benefits of the Company and its successors and assignees. The Company may assign its rights, benefits and obligations under this Agreement without prejudice to these rights, benefits and obligations. The Subscriber may not assign this Agreement without the previous written authority of the Company.

14. NOTICE

All notice to the Company herein provided shall be sent by the Subscriber in writing by 1st class Recorded Delivery Post to the Company's Secretary and the Subscriber must retain the relevant receipt as proof.

15. FRUSTRATION OF CONTRACT

This agreement shall cease in the event that the parts required for servicing the equipment become obsolete by the Company and/or become unavailable by the original manufacturer or replacement manufacturer whereupon both parties will be discharged from all further rights, duties and obligations under this agreement and the equipment will be returned to the Company if applicable.

16. RETENTION OF TITLE

Title to the goods shall remain with the Company until payment has been received in full whether it is lease or cash.

THE SCHEDULE CLASSES OF MAINTENANCE SERVICES MAINTENANCE

In response to the Subscriber' request the Company shall at the earliest practicable opportunity cause Technical Staff to respond to the Service Request either verbally or remotely or physically to attend to inspect and/or repair the Equipment dependent on the Service Option selected overleaf (defined below).

4 Hrs

The Company will endeavour to provide the Subscriber with this contract, a 4 hour response during the hours 9.00 to 17.00 hours Monday to Friday excluding Bank Holidays. The contract shall include parts and labour (Subject to clause 3).

8 Hrs

The Company will endeavour to provide the Subscriber with this contract, an 8 hour response during the hours 9.00 to 17.00 hours Monday to Friday excluding Bank Holidays. The contract shall include parts and labour (Subject to clause 3).

12 Hrs

The Company will endeavour to provide the Subscriber with this contract, a 12 hour response during the hours 9.00 to 17.00 hours Monday to Friday excluding Bank Holidays. The contract shall include parts and labour (Subject to clause 3).

THE SCHEDULE OF CURRENT LABOUR CHARGES Normal Working Hour

The Company's normal working hours are 9.00 to 17.00 Monday to Friday. Any work requested during these hours can be charged on a per hour, half day or full day rate and the Subscriber will be given prior notice, either verbally or written, and no such work will be undertaken until the Subscriber has given express permission either verbally or written for the work to be carried out in full to the agreed price. The labour charge does not include any costs incurred for any parts, cabling or hardware required to complete the request work. (Also see clauses 8 and 16).

Outside Normal Working Hours

Any work requested by the Subscriber that commences either prior to or directly after normal working hour will be charged at the Company's current hourly rate and no such work will be undertaken until the Subscriber has given express permission either verbally or written for the work to be carried out in full to the agreed price. The labour charge does not include any costs incurred for any parts, cabling or hardware required to complete the Request work. (Also see clauses 8 and 16).

Saturdays

Any work requested by the Subscriber on a Saturday will be charged at 1.5 times the Company's current daily rate (irrespective of the actual time spent by the Technical Staff on site and/or remotely to complete such work) and no such work will be undertaken until the Subscriber has given express permission either verbally or written for the work to be carried out in full to the agreed price. The labour charge does not include any costs incurred for any parts, cabling or hardware required to complete the Request work. (Also see clauses 8 and 16).

Sundays and Bank Holidays

Any work requested by the Subscriber on a Sunday or Bank Holiday will be charged at 2 times the Company's current daily rate (irrespective of the actual time spent by the Technical Staff on site and/or remotely to complete such work) and no such work will be undertaken until the Subscriber has given express permission either verbally or written for the work to be carried out in full to the agreed price. The labour charge does not include any costs incurred for any parts, cabling or hardware required to complete the Request work. (Also see clauses 8 and 16).

Remote Programming

Any work requested by the Subscriber that can be or is expressly requested to be carried out remotely will be charged a nominal charge or per hour, half day or full day rate based upon the time required and/or taken to complete such work and the Subscriber will be given prior notice, either verbally or written, and no such work will be undertaken until the Subscriber has given express permission either verbally or written for the work to be carried out in full to the agreed price. The labour charge does not include any costs incurred for any parts, cabling or hardware required to complete the request work. (Also see clauses 8 and 16).