

## **TERMS AND CONDITIONS OF REPAIR AND MAINTENANCE**

<b>Agreement</b>	The maintenance service contract agreement signed on behalf of the Customer and the Company incorporating these conditions.
<b>Company</b>	21Plus Telecom Limited
<b>Contract Commencement Date</b>	The contract commencement date described in the Agreement.
<b>Customer</b>	The customer of the Company who enters into the Agreement.
<b>Equipment</b>	The equipment forming the subject of the Agreement, the description and location which are shown in the Agreement.
<b>Force Majeure</b>	any circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.
<b>Location</b>	The location of the Equipment shown in the agreement, or any other location agreed from time to time between the parties.
<b>Maintenance Service Charges</b>	The charges for the Service described in the Agreement.
<b>Normal Working Hours</b>	The hours of 9am to 5pm (inclusive) on any Working Day.
<b>Service</b>	The repair and maintenance service to be provided pursuant to condition 2.
<b>Working Day</b>	Any other day other than Saturday, Sunday or a Bank or Public Holiday.

1. In these terms and conditions and unless the context otherwise requires, all headings contained herein are for ease of reference only and shall not affect the construction or interpretation of the Agreement.

### **2. SERVICE TO BE PROVIDED**

2.1 During the period of the Agreement, the Company shall provide the Customer with a repair and maintenance service for the Equipment.

2.2 The Service shall consist of:

- (a) Routine maintenance of the Equipment at such intervals as the Company may reasonably determine to be necessary in order to keep the Equipment in good working order, and
- (b) The repair of any defect in or malfunction of, the Equipment which is discovered by the Company's representatives during the course of routine maintenance checks or is reported to the Company by the Customer from time to time.

2.3 Routine maintenance of the Equipment shall be carried out by one of the Company's suitably qualified and duly authorised representatives attending at the Location at such times during Normal Working Hours as may be agreed in advance between the Company and the Customer from time to time.

2.4 If the Company's representative discovers a defect in or malfunction of the Equipment in the course of routine maintenance, the Company's representative will use all reasonable endeavours to repair it at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Company's representative will seek to make suitable arrangements with the Customer for:

- (a) A further visit to be made to the Location during Normal Working Hours for the repair of the defect or malfunction, or
- (b) If the Equipment is inoperative as a result of the defect or malfunction, its repair at the Location outside Normal Working Hours, or
- (c) If it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Equipment (or, where practical, the part of the Equipment in question) for the purposes of repair.

2.5 If the Customer reports a defect in or malfunction of the Equipment during Normal Working Hours, the Company shall use its best endeavours to ensure that one of the Company's suitably qualified and duly authorised representatives attends at the Location, during Normal Working Hours, within the agreed period of time, the representative will use all reasonable endeavours to repair the defect or malfunction at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Company's representative shall seek to make such arrangements with the Customer as mentioned in condition 2.4.

2.6 If the Customer reports a defect in or malfunction of the Equipment after Normal Working Hours on any day, then unless the Company

expressly agrees otherwise, the report shall be deemed to be made at the beginning of Normal Working Hours on the next Working Day, and condition 2.5 shall take effect accordingly.

2.7 All reports of defects in or malfunctions of the Equipment must be made by telephone or in writing, as appropriate, by a representative of the Customer and otherwise in such a manner as the Company may reasonably require from time to time.

### **3. SPARE PARTS AND REPLACEMENTS**

3.1 The Company shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the Equipment in good working order, and no extra charge will be made for the supply of minor spare parts and/or replacement components. If, however, the Equipment is damaged otherwise than by fair wear and reasonable use or the Equipment requires a major spare part or replacement component (as to whether either of which events has occurred on the Company's decision shall be final and binding to the Customer), the Company reserves the right to charge the Customer for the supply of any damaged Equipment or where there is a requirement for a major part, spare or replacement component.

3.2 All spare parts and replacement components supplied by the Company shall become part of the Equipment and any parts and components removed from it shall become the Company's property, unless otherwise agreed in writing between the parties.

### **4. SERVICES NOT INCLUDED**

4.1 The Service shall not apply to any design defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in the Company's opinion has arisen as a result of:

- (a) Electrical work external to the Equipment,
- (b) Transportation or relocation of the Equipment not performed by or on behalf of the Company,
- (c) Any error or omission relating to the operation of the Equipment,
- (d) Any modification, adjustment or repair to the Equipment made by a third party without the written consent of the Company,
- (e) The subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls, or
- (f) Any other cause (except fair wear and tear) which is not due to the neglect or default of the Company. If on investigation by the Company, it reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in condition 4.1, the Customer shall be liable for all costs incurred by the Company making the investigation and determining the cause and, if in its sole discretion it repairs the same, such costs to be payable in accordance with condition 6.3.

4.2 If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred the Company's decision shall be final and binding on the Customer) the Company reserves the right to terminate the Agreement with immediate effect, by giving written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Company shall repay to the Customer a fair proportion of any charges for the Company's services which have been paid in advance by the Customer.

4.3 Except as expressly provided in the Agreement or as agreed between the parties in writing, the Company shall have no obligation to provide any services to the Customer outside Normal Working Hours.

### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

- (a) At all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment,
- (b) Not to move the Equipment from the Location without obtaining the prior written consent of the Company.
- (c) Use the Equipment only in accordance with such instructions and recommendations, relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Company, and
- (d) Not allow any person other than the Company's representatives to adjust, maintain, repair, replace or remove any part of the Equipment.

5.2 The Customer shall ensure that the Company's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable the Company to perform its duties.

5.3 The Customer shall provide the Company with such information concerning the Equipment, its application, use, location and environment as the Company may reasonably request to enable it to carry out its duties.

5.4 The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit any premises of the Customer.

### **6. CHARGES**

6.1 In consideration of the provision of the Service, the Customer shall, subject to receipt of an invoice from the Company, pay to the Company the Maintenance Service Charges.

6.2 The Company reserves the right to increase the Maintenance Service Charges on each anniversary of the Contract Commencement Date and in the event that it does, it will notify the Customer in writing of the increase at least 14 days before such increases are implemented.

6.3 If the Customer requests the Company's services without any reasonable justification, or requires the Company to repair a defect in or malfunction of the Equipment which is due to circumstances not covered under the Agreement, the Customer shall be liable to pay the Company's standard charges from time to time in force for such services.

6.4 All charges and other sums payable by the Customer hereunder are exclusive of any applicable value added tax, which shall be additionally payable by the Customer together with the charge or the sum in question.

- 6.5 All invoices are payable within 30 days of their date. If the Customer fails to pay on the due date, then the overdue amount shall bear interest from the due date until payment is made to the Company (both before and after any judgment) at 4 percent per annum over The Bank of Scotland base rate from time to time, and the Customer shall reimburse the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.
- 6.6 If the Customer fails to pay any invoice within 30 days of the invoice issue date, the Customer will incur an administration cost in the sum of £10.00 plus VAT in addition to the invoice amount and associated costs referred to in 6.5 above for each missed payment.

## **7. LIABILITY**

- 7.1 Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or any other term, or any duty at common law, or under the express terms of the Agreement (except in the case of fraud on the part of the Company), for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the provision of services hereunder (including any delay in supplying or any failure to supply the said services in accordance with the Agreement or at all), and the entire liability of the Company under or in connection with the Agreement shall not exceed the annual Maintenance Service Charges, except as expressly provided in these Conditions.

## **8. FORCE MAJEURE**

- 8.1 If the Company is affected by Force Majeure it shall promptly notify the Customer of the nature and extent of the circumstances in question.
- 8.2 The Company shall not be deemed to be in breach of the Agreement, or otherwise be liable to the Customer, for any delay in performance or the non-performance of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the Customer and the time for performance of that obligation shall be extended accordingly.

## **9. DURATION AND TERMINATION**

- 9.1 The Agreement shall continue in force for an initial period of two years from the Contract Commencement Date (unless a different period has been agreed, in writing, between the parties) continuing thereafter for further one year periods unless or until terminated by either party giving to the other not less than three months' prior written notice of termination expiring at the end of that initial period or any anniversary thereof.
- 9.2 The Company shall be entitled to terminate the Agreement:
- (a) In the circumstances and to the extent referred to in condition 4.3,
  - (b) Forthwith by giving written notice to the Customer if any sum payable under the Agreement is not paid by the due date,
  - (c) If the Customer commits any continuing or material breach of any of the provisions of the Agreement and, if a breach is capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied,
  - (d) If an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer,
  - (e) if the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order,
  - (f) If the Customer goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganization and in such manner that the company resulting from the reorganization effectively agrees to be bound by or to assume the obligations imposed on the other under the Agreement), or
  - (g) If the Customer ceases, or threatens to cease, to carry on business.
- 9.3 For the purpose on condition 9.2 (c), a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not the essence).
- 9.4 A waiver by either party of a breach of the Agreement shall not be considered as a waiver of a subsequent breach of the same or any other provision.
- 9.5 The rights to terminate the Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 9.6 On the termination of the Agreement for any reason, neither party shall have any further obligation to the other under the Agreement, except as otherwise provided in the Agreement and except for rights which have accrued prior to termination.

## **10. NATURE OF AGREEMENT**

- 10.1 The Company may carry out its obligations under the Agreement through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 10.2 The Agreement is personal to the Customer, which may not, without the written consent of the Company, Assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub -contract or otherwise delegate any of its obligations under the Agreement.
- 10.3 Nothing in the Agreement shall create, or be deemed to create, a partnership between the parties.
- 10.4 The Agreement contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 10.5 Each party acknowledges that, in entering into the Agreement, it does not rely on representation, warranty or other provision except as expressly provided in the Agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are

excluded to the fullest extent permitted by law, but nothing in the Agreement shall affect the liability of either party for fraudulent misrepresentation.

- 10.6 If any provision of the Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Agreement and the remainder of the affected provisions shall continue to be valid.
- 10.7 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 10.8 Failure or delay by the Company in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.
- 10.9 Any waiver by the Company of any breach of, or any default under, any provision of the Agreement by the Customer will not be deemed to be a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
- 10.10 The parties to the Agreement do not intend that any term of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 10.11 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and each party agrees to submit to the non-exclusive jurisdiction of the English courts.

#### **11. COMMUNICATION**

11.1 All communications between the parties about the Agreement must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

- (a) (In case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company, or
- (b) (in the case of communications to the Customer) to the registered office of the Customer (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Agreement or such other address as shall be notified to the Company by the Customer.

11.2 Communications shall be deemed to have been received:

- (a) If sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and banks and public holidays) after posting (exclusive of the day of posting),
- (b) If delivered by hand, on the day of delivery,
- (c) If sent by facsimile transmission on a Working Day prior to 4.00pm, at the time of transmission and otherwise on the next Working Day.