

## 1. Effect

1.1 In these terms and conditions

'We' means Worth Comms Limited. 'You' means a customer who enters into a contract on these conditions. 'Us', 'Ours' and 'Yours' will be interpreted accordingly. 'Your Equipment' means the apparatus or system sold, hired, licensed or leased to You as described on the face of this Agreement and which we have accepted for maintenance. Software is only included if the Software Supplement is specified on the face of this Agreement. 'The Installation Site' means the location specified on the face of this Agreement where Your Equipment is installed, or is to be installed, at the date of this Agreement. 'Commencement Date' means the date on which installation and associated testing of Your Equipment is completed so that it becomes available to You to use for its intended purpose or when it is taken into use by You whichever is the earlier. 'The Minimum Term' means the period specified on the face of this Agreement (which must be not less than one year from the Commencement Date). "Class of Service" means the category of service as described in the attached Schedule, which is specified on the face of this Agreement or as subsequently agreed by Us.

1.2 Our terms and conditions shall apply and shall exclude any others proposed or required by You or which might otherwise have been implied by law or custom and practice. Our failure to object to any other terms and conditions proposed or required by You shall not be interpreted as a departure from this strict requirement.

1.3 Any other conditions will only apply if Our acceptance of them has been confirmed in writing by one of our Executive Directors.

## 2. Term

2.1 This Agreement takes effect when a copy signed by You or on Your behalf has been accepted by Us.

2.2 This Agreement will last for the period beginning on the Commencement Date and ending after the Minimum Term, It will then continue from year to year unless and until terminated by You or Us giving not less than ninety days written notice to expire on any subsequent anniversary of the Commencement Date or in accordance with the other provisions of this Agreement providing for termination.

2.3 Where Your Equipment is hired or leased from Us, or from Hirers or Lessors with whom We are associated, it may be a requirement of the Hire or Lease Agreement that so long as the hiring or letting continues You will have a valid Maintenance Agreement with Us.

## 3. Our Maintenance Obligations

3.1 We will maintain Your Equipment in efficient working order. Our service will, where agreed, include routine checks by remote diagnostics and/or site visits to carry out preventative maintenance and to make adjustments and repairs. Whilst We will endeavour to maintain the functionality of Your Equipment in accordance with its original specification Our ability to do so is dependant upon continued availability of parts, components and, in some cases, software support from the third parties so precise adherence to original performance specifications cannot be guaranteed.

3.2 Unless We agree otherwise Our obligations are limited to providing maintenance and support at the Installation Site.

3.3 In response to Your request we will arrange for Our personnel to provide maintenance and support services in accordance with the relevant Class of Service requirements but a site visit is not guaranteed as in some case it may be more efficient to carry out maintenance and support using remote diagnostics.

3.4 Whatever means We use We will try to ensure that all faults reported before mid-day receive attention the same working day or in the case of Supercover within 4 hours.

3.5 Our maintenance and support service does not (unless otherwise agreed) cover:

- a) any alteration to Your Equipment necessary to meet changes in Your requirements or the standards or requirements of any other system or network to which Your Equipment may be connected directly or indirectly,
- b) any work on power supplies or wiring or other items not forming part of Your Equipment,
- c) moving or re-installation of Your Equipment,
- d) the cost of repair or replacement or extra service made necessary by accidental damage, misuse, negligence or failure to observe Our own or the relevant manufacturer's recommendations or for causes external to Your Equipment such as (but not limited to) lightning, electromagnetic interference, failure or fluctuation of power supplies, or air conditioning, or any defect in or failure of a telecommunications system or network to which Your Equipment is connected, directly or indirectly,
- e) maintenance and support outside Our normal working hours or on public holidays unless included within the relevant Class of Service,
- f) support of any software forming part of Your Equipment unless the

Software Supplement is specified on the face of this Agreement and You are using legitimately a correctly supported software release in accordance with all relevant licence terms and conditions and no unauthorised modifications, adaptations or copies have been made to or of such software. Software Support is also subject to the terms of condition 14, g) supply of consumables such as tapes, discs, paper rolls and similar items

h) maintenance of discs, tapes or other data carrying media or rectification of lost or corrupted data arising for any reason apart from Our negligence We reserve the right to levy extra charges for any such excluded services if we are willing to undertake them.

3.6 If Your Equipment is not:

(i) already maintained by Us, or

(ii) covered by at least a twelve month warranty given by Us or the manufacturer(s) or suppliers) of Your Equipment then Our provision of Maintenance Services will be subject to Our inspecting Your Equipment at Your expense and such repairs being carried out (also at Your expense) as may be necessary to put Your Equipment in good working order.

3.7 If any part of Your Equipment can no longer be maintained economically in efficient operating condition (such as, but not limited to Your Equipment having become worn out or spare parts or software support no longer being available) or if it is damaged beyond repair (otherwise than through Our fault), then We reserve the right to cancel this Agreement by giving You written notice. We shall then repay You pro rata for any maintenance and support services, which will not be provided, but which You have paid for in advance but We shall not be under any further liability to You.

## 4. Your Obligations

4.1 You are responsible for ensuring that appropriate environmental conditions at the Installation Site are maintained at all times in accordance with Our recommendations and those of the relevant manufacturer(s) or supplier(s) or Your Equipment and the operator of any network or system to which it is connected directly or indirectly. In particular We will not accept responsibility for the quality of communications over any telecommunications apparatus where You have elected not to observe fully the recommendations of the Network Code of Practice, as published from time to time by the Office of Telecommunications.

4.2 You will allow our maintenance engineers full access to Your Equipment whenever necessary and You will provide such facilities as they may reasonably require.

4.3 You will comply with all Your legal obligations to ensure a healthy and safe working environment for Our maintenance engineers.

4.4 You will use Your Equipment with care observing both Our recommendations and those of the manufacturer(s) or supplier(s) of Your Equipment. In particular You will only use software that is suitable for Your Equipment and consumables that are of a specification and quality suitable for use with Your Equipment and You will take all necessary precautions to protect against the loss or corruption of any data stored on or used in connection with Your Equipment.

4.5 You will not permit anyone other than Our maintenance engineers to carry out any maintenance or other operations on Your Equipment (apart from those routine functions that are incidental to its day to day use) or to connect any other apparatus to Your Equipment unless We have agreed in writing,

4.6 You shall indemnify Us against all liability costs and expenses arising in the event that

a) We cannot keep Your Equipment in good working order due to causes within Your control.

b) You allow Your Equipment to be altered or interfered with by anyone other than Our authorised maintenance engineers

## 5. Limitations

5.1 We will not be liable for failure to provide maintenance and support services if Our failure results from Force Majeure" such as (but not limited to), acts of God, refusal or withdrawal of licences, or other governmental act, fire, explosion, accident, industrial dispute, difficulty in obtaining materials or services or any cause beyond Our reasonable control.

5.2 We shall not be liable for any failure attributable to any other network or system to which Your Equipment may be connected directly or indirectly or the use of unsuitable software or for electromagnetic interference or any damage due to misuse or incorrect operation of Your Equipment.

5.3 In the case of damage to Your property caused by Our negligence, or that of Our employees or contractors. Our financial liability shall not exceed a maximum of £1 million pounds for any one act or event or series of events arising from a common cause.

## 6. Warranty

- 6.1 We warrant that We will use reasonable care and skill in carrying out maintenance and support services.
- 6.2 We warrant also that we have concluded agreements with the manufacturers or distributors of spare parts, and components for Your Equipment and for the provision, where appropriate, of back up software support services, that entitle us to procure such items and that we have obtained all necessary approvals and registrations for Us to provide maintenance and support services for Your Equipment.
- 6.3 You accept that the effect of any failure on Our part to provide maintenance and support services in accordance with Our obligations will be difficult to quantify and that We cannot be expected to know what the financial consequences might be. Accordingly Our liability to You for any failure to provide maintenance and support services in accordance with Our obligations shall be limited to a maximum of one year's maintenance charges at Our then current rate.
- 6.4 Whether or not this Agreement remains in force We shall not in any circumstances be liable for any loss of contracts, profits, business or use of Your Equipment nor for any other indirect or consequential loss whatsoever
- 6.5 All other warranties and conditions that might otherwise have been implied by law are excluded except to the extent that they cannot by law be excluded.
- 6.6 We do not exclude or limit Our liability for negligence causing death or personal injury but, apart from Our liability for damage to Your property, as set out in Condition 5 above, We shall have no other liability to You whatsoever as a result of Our negligence or that of Our personnel contractors.

## 7. Charges and Payment

- 7.1 Our maintenance charges are payable by You in advance (either monthly or annually as specified on the face of this Agreement) within 30 (thirty) days of the date of our invoice. We reserve the right to withhold maintenance and support if payment has not been received.
- 7.2 We may adjust Our charges for Maintenance Services by not less than thirty days written notice given at any time after the first anniversary date of this Agreement or any longer period for which we have accepted fixed charges. Such an adjustment will not be made (except for adjustments in VAT or similar taxes) more than once in any one year of this Agreement calculated by reference to its anniversary date. In the event that any such adjustment of Our charges, that is not attributable to any of the circumstances specified in paragraph 7.3, results in an increase of more than 10% above the increase in the Retail Price Index for the same period You will be entitled to terminate this Agreement by written notice.
- 7.3 In addition to any annual adjustment Our maintenance charges payable to You may be adjusted at any time if:
- The Class of Maintenance Service provided is changed for any reason
  - Revised Software is installed in Your Equipment
  - The Software installed in Your Equipment is no longer current release
  - Your Equipment is extended or modified.
- 7.4 Any money due and payable to Us which is more than 15 (fifteen) days overdue will bear interest on a day to day basis at 3% (three per cent) above the Base Lending Rate of the National Westminster Bank, London from the due date of payment and any money received by Us will be applied first against such interest prior to reduction of the outstanding amounts due
- 7.5 The charges payable under this Agreement do not include Value Added Tax but will be increased by the gross amount of Value Added Tax and/or such other taxes as may be chargeable.

## 8. Conditions

- 8.1 We may raise an additional charge for Our time and expense if:
- a) Our maintenance engineer is called out because of faults that are found upon examination not to be on Your Equipment (such as power supply fluctuations or faults on another network system or apparatus to which Your Equipment is connected), or,
  - b) If You report Your Equipment faulty and it proves not to be so, or;
  - c) If maintenance is necessary due to any cause other than fair wear and tear during proper use.
  - d) If we are requested to provide emergency out of hours cover as specified in the attached Schedule.
- 8.2 Our standard charge for emergency out of hours cover will be the amount specified on the face of this Agreement or as notified to you from time to time and will be for not less than two hours for each call out. Any additional time (including travelling time) will be charged at the applicable rate in one-hour increments.
- 8.3 If additional charges become payable You will pay them in full within 30 (thirty) days from the date of Our invoice.

8.4 We shall be entitled to withhold Maintenance Services if any sum payable to Us is more than 15 (fifteen) days in arrears.

## 9. Default and Termination

9.1 If You commit any breach of this Agreement or any other Agreement with Us and fail to remedy Your breach promptly on receiving notice of such breach from Us, or if You suffer distress or execution or commit an act of bankruptcy, or if You are a Company that go or are put into liquidation (except for solvent amalgamation or reconstruction), or if You enter into any arrangement of composition with Your Creditors, or if a Receiver and Administrative Receiver is appointed over any part of Your business or, if You are a partnership, any of Your partners is declared bankrupt, then in any such cases it shall amount to a repudiation by You of your obligations under this Agreement and We shall be entitled to serve notice suspending or terminating Maintenance Services

## 10. Assignment and Sub-Contracting

10.1 You may not assign or transfer the benefit of this Agreement without Our prior written consent which We will not withhold unreasonably although Our consent will be conditional upon Your remaining liability to pay all charges and perform all obligations under this Agreement until the proposed assignee has agreed in writing to be bound by the terms of this Agreement.

10.2 We may arrange for the maintenance and support services to be carried out by one or more of Our subsidiary companies provided that such companies are covered by the appropriate registration of Our maintenance capability with the British Standards Institution and that We shall be responsible to You for their provision of maintenance and support services in accordance with the terms and the conditions of this Agreement

## 11. Law

This agreement shall be governed by English Law and both You and We consent to the exclusive jurisdiction of the English Courts

## 12. Invalidity

If any provision of this Agreement is or becomes illegal, invalid or unenforceable its other provisions shall not be affected and shall remain in force

## 13. Entire Agreement

This Agreement sets out the complete Agreement between You and Us regarding the provision of Maintenance Services for Your Equipment.

## Software Support Supplement

When the terms and conditions of this Supplement are specified on the face of this Agreement We will provide You with the following support services:

### a) Error Correction

If you discover that a current release of software forming part of Your Equipment does not comply with its specification and You can provide Us with an example of such defect or error We shall use all reasonable endeavours to produce that the relevant manufacturer or supplier corrects promptly such defect or error, including supply of appropriate amendments to any relevant User Manuals We shall also provide You with all such assistance as may be reasonably required to implement use of the corrected Software. This service shall not include any defects or errors caused by unauthorised modifications, incorrect use, operator error or any fault in apparatus, software or systems not supplied and maintained by Us

If any User Manuals do not provide adequate or correct instructions for the proper use of software we will also use all reasonable endeavours to procure appropriate amendments to such documentation

### b) New Releases

We will notify You promptly of any new releases of software which Our manufacturers or suppliers make available to Us for supply to Our customers, including information as to any improvements that the new release may offer and any adverse effects it may have. In some cases the terms of Your licence to use software or Your agreement with Us or the relevant supplier or licensor may require You to use the latest release of software.

In either case we will provide You with the support services for that release provided that You have paid the appropriate Licence Fees and installation charges and the relevant manufacturer or supplier has made available back up support services to Us.

If required by You We will provide training for Your staff in the use of new release as soon as reasonably practicable and subject to payment of Our charges at the standard scale then in force.