

MAINTENANCE SERVICE CONTRACT AGREEMENT TERMS & CONDITIONS

1. Definitions
1.1 "Act" means the Telecommunications Act 1984.
1.2 "Agreement" means the Maintenance Agreement set out overleaf to which these terms and conditions are annexed.
1.3 "Charges" means Maintenance Service Charges and Supplementary Charges.
1.4 "Commencement Date" means the date of the Agreement is signed by the Customer and accepted by the Maintainer.
1.5 "Customer" means the person, firm or company named in the Agreement and includes successors in title to such person, firm or company, which is the beneficiary of the Maintenance Services.
1.6 "Customer or Contact" means the person referred to in the Agreement or otherwise nominated by the Customer in writing in accordance with condition 1.7.
1.7 "Equipment" means the telecommunications system and ancillary apparatus or such other electronic computer or security equipment of which brief details are set out in the Equipment Schedule, which forms part of the Agreement and as further defined in condition 8.1.
1.8 "Fault Report Call" means a report of a fault in the Equipment made by the Customer Contact to the Maintainer at a telephone number or numbers specified for such purpose by the Maintainer.
1.9 "Initial Duration" means where no finance plan exists a period of 75 months from the Commencement Date or where a finance plan exists (to protect the Equipment in line with the requirements of the finance company) the period of the finance plan or such other period as may be specified in the Special Conditions Schedule.
1.10 "Maintainer" means Customer Care Company Ltd (CCC) and it's successors in title and assigns from time to time.
1.11 "Maintenance Service" means the Maintenance Service to be provided by the Maintainer to the Customer pursuant to this Agreement by reference to the categories more particularly set out in the Agreement.
1.12 "Maintenance Service Charges" means the Maintenance Services Charges levied by the Maintainer for the Maintenance Service referred to in the Agreement and the Equipment Schedule subject to adjustment as herein provided.
1.13 "PSTN" means the Public Switched Telephone Network provided by British Telecommunications plc or any other licensed Public Telecommunications Operator.
1.14 "PTO" means Public Telecommunications Operator as defined in s.9(3) of the Act
1.15 "Response Period" means the period commencing with the Customer Service Call and ending on the earlier of the time when the Maintainer attends the Site or the time when the Maintainer has given the advice referred to in condition 6.2
1.16 "Site(s)" means the premises where the Equipment is located there being an Equipment Schedule for each such Site (if more than one).
1.17 "Supplementary Charges" means the fair and reasonable charges for the provision of Maintenance Service hereinafter mentioned which are required by the Customer but which are not covered by the Maintenance Service Charge.
1.18 "VAT" means Value Added Tax and any other like tax or duty unless the context otherwise requires in these conditions:
1.18.1 Words importing the singular shall include the plural and vice versa
1.18.2 Words importing the masculine gender shall include the other genders
1.18.3 References to persons shall include bodies of persons whether corporate or incorporate
2. Quotation/Proposal
2.1 Subject to withdrawal by CCC by written notice to the Customer prior to acceptance pursuant to condition 3.1 below, any quotation or proposal by CCC shall, unless otherwise stated therein, be open for acceptance by the Customer within 30 days of the date of quotation or proposal.
3. The Services
3.1 CCC undertakes to provide the Customer with and the Customer agrees to accept the Maintenance Services in accordance with any written quotation of CCC which is accepted by the Customer in writing or any written order of the Customer which is accepted by CCC, subject to these conditions, which shall govern the Agreement and be incorporated therein to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer. Notwithstanding that the Customer may require the Maintenance Services on its standard form of purchase order and whether or not incorporating the Customer's own terms and conditions, any such order shall be treated solely as a request to provide the Services and have no other contractual effect whatsoever.
3.2 No Agreement shall come into existence until the Customer's order, however given, is accepted by the earliest of (a) CCC's written acceptance or (b) supply of the Maintenance Services or (c) the acceptance and authorisation by a Director or Sales Manager of CCC once the Agreement is reviewed back at CCC's headquarters or (d) the raising of CCC's invoice in respect thereof
3.3 These conditions shall be incorporated into the Agreement to the exclusion of any terms & conditions stipulated and referred to by the Customer
3.4 No variations or amendments to the Agreement or any quotation or proposal shall be binding on CCC unless agreed accepted and confirmed by CCC in writing
3.5 CCC's employees or agents are not authorised to make any representations concerning the Services unless confirmed by CCC in writing and signed by a Director of CCC. In entering into the Agreement the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
3.6 Any advice or recommendations given by CCC or its employees or agents to the Customer or its employees or agents as to the application or use of the Maintenance Services which is not confirmed in writing by CCC is followed or acted upon entirely at the Customer's own risk, accordingly CCC shall not be liable for any such advice or recommendation which is not so confirmed.
3.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information by CCC shall be subject to correction without any liability on the part of CCC.
4. Inspection of Equipment/Acceptance Tests

4.1 If the Equipment (or any part thereof) was not installed by the Maintainer or previously has been maintained by a third party the Maintainer shall be entitled to inspect and test the Equipment prior to acceptance thereof and prior to the assumption by the Maintainer of responsibility to provide Maintenance Services in accordance with this Agreement.
4.2 If such inspection reveals:
4.2.1 that the Equipment or any part of it is not approved pursuant to the Act for connection to the PSTN where requisite or does not meet the applicable UK or EI regulatory standards; or
4.2.2 that in the Maintainer's opinion the Equipment can no longer be economically maintained; or
4.2.3 that the Equipment is in unsatisfactory condition or is being overworked or is the wrong model for the required purpose; or
4.2.4 that the installation of the Equipment has been undertaken in a manner consistent with relevant telecommunications legislation or such other quality standard as applied to the installation when it was undertaken the Maintainer shall inform the Customer and offer a quotation for repairing or replacing the relevant Equipment with the same or appropriate alternative (but equivalent) equipment whereupon the Customer shall (by the Maintainer or a third party) have the necessary corrective work undertaken whereupon the Maintainer will re-inspect / test the Equipment.
4.3 Should the Customer fail to make the Equipment available for repair or replacement within a reasonable time and in any event within three months the Maintainer shall be entitled by written notice immediately to withdraw the Maintenance Service (but without prejudice to any accrued rights of the Maintainer).
5. Agreement Period and Termination
5.1 Subject to the provision for earlier determination hereinafter contained, the Agreement shall continue in force from the Commencement Date for the Initial Duration and shall thereafter from year to year unless and until terminated by either party giving to the other 90 days written notice expiring on any subsequent anniversary of the Commencement Date
5.2 Either party may terminate the Agreement (without prejudice to accrued rights) by written notice if the other party is in repudiatory breach of any obligation under the Agreement and (where remediable) fails to remedy the breach within 30 days of receipt of a notice to that effect.
5.3 The Maintainer may terminate the Agreement forthwith if the Customer commits any act of bankruptcy or goes into liquidation (except in the case of amalgamation or reconstruction) or enters into an arrangement or composition with its creditors or if a receiver is appointed over the whole or any part of its business or assets.
5.4 Termination of this Agreement for whatever reason shall be without prejudice to any right or remedy of the Maintainer against the Customer for its liability to pay any accrued charges.
5.5 Following termination of this Agreement by either party the Maintainer shall have no liability to refund any Maintenance Service Charge for any unexpired part of a year.
6. Maintenance Service Obligations
6.1 Subject to the terms and conditions hereinafter appearing and subject (in particular) to all Charges due to the Maintainer hereunder having been paid in full, the Maintainer shall use all reasonable endeavours to respond to a Fault Report Call within the appropriate response period & category.
6.2 The Maintainer further agrees to respond to Fault Report Calls by:-
6.2.1 completing a Fault Report Record which shall include a description of the fault and the Maintainer's expert opinion as to the cause or causes thereof giving reasons such opinion shall be binding on the parties in the absence of manifest error;
6.2.2 carrying out wherever possible remote diagnostic checks from the Maintainer's premises;
6.2.3 providing advice by telephone or fax including advice as to remedial action and checks to be carried out by the Customer.
6.3 For the avoidance of doubt the Maintainer shall following a Fault Report Call (and unless the actions referred to in 6.2.2 and 6.2.3 result in clearance of the fault) promptly (meaning within the Response Period aforesaid) visit the Site of the reported fault in order to diagnose and correct the fault.
7. Categories of Maintenance Service/Response Times
7.1 Maintenance Service is available in the following optional Maintenance Service Categories appropriate to the Agreement set out on the face of this Agreement
7.1.1 Sovereign Service Scheme. The Maintainer will use all reasonable endeavours to respond to Fault Report Calls within 4 hours for major system failures and within 8 hours for minor system failures and to repair all non-intermittent faults within 16 working hours between the hours of 8.30am and 5.30pm Monday to Friday (excluding public and bank holidays)
7.1.2 Disaster Recover Scheme. Where unanticipated disasters have occurred such as fire, flood, explosion or storm damage the Maintainer will use all reasonable endeavours to provide temporary service for the Customer and to assist in the provision of continuity of their telecommunications operations subject to conditions 8 and 9 below.
7.1.3 Sovereign Customer Service Scheme. A tailored service representing the unique requirements of the Customer will be provided as per the attached Special Conditions Schedule confirming the details of the customised Maintenance Service Category.
8. Limitation on the Scope of Maintenance Service
8.1 Maintenance Service shall cover the Equipment which shall for the purposes of this Agreement be deemed to include ancillary and block wiring attached to and forming part of the Equipment up to and including the line jack unit(s) and any distribution box(es) but shall be deemed to exclude all telephone extensions equipment other than as may be specifically listed in the Equipment Schedule.
8.2 Maintenance Service Charges for the Maintenance Service extend only to the cost of parts labour and the call-out costs associated with the making good of faults comprising malfunction or component failure in the Equipment caused by fair wear and tear.
8.3 In the event of faults resulting from causes other than fair wear and tear Supplementary Charges will be payable pursuant to condition 9 hereof. Examples of such other causes include: Misuse, incorrect environmental conditions, including incorrect temperature and humidity levels, faulty installation, mains electrical surges or failures, lightning damage, electromagnetic interference, loss of software generated

by the Customer, failure of or deterioration of date-expired consumables (including batteries) accidental or willful damage. Such work can only be undertaken by CCC and will be invoiced at industry standard rates.
8.4 Maintenance Services do not extend to the provision of electrical work to the Equipment, installing or removing the Equipment or works required due to failure to observe the recommendations of a PTO.
9. Charges
9.1 The Maintenance Service Charges during the Initial Duration shall be payable as specified on the face of the Agreement and shall be payable annually in advance. Unless otherwise agreed in writing, the Customer agrees to pay for the Maintenance Services by direct debit from the Customer's bank account within fourteen days of the date of CCC's invoice. Failure by the Customer to pay for the equipment and services by direct debit shall incur a surcharge by CCC of 3% or £5 whichever shall be the greater in respect of each invoice or payment in respect of the Contract Price.
9.2 The Maintenance Service Charges after the expiry of the Initial Duration may be increased by the Maintainer as necessary or appropriate to cover the increased costs of labour and/or materials and obsolescence of any maintained equipment, where the costs of equipment become greater due to the difficulty in obtaining such equipment.
9.3 The Customer shall pay Supplementary Charges inter alia:-
9.3.1 where the Maintainer responds to a Fault Report Call and the fault reported is (due to the cause of the fault) outside the scope of the Maintenance Service as stipulated in condition 8;
9.3.2 where a charge is levied for inspection and testing or Equipment pursuant to condition 4 or 8;
9.3.3 where the Maintainer responds to a fault found to be caused by apparatus other than the Equipment;
9.3.4 where work is undertaken at times which are outside the times referred to in the relevant Category of Maintenance Service applicable to the Equipment which is covered by this agreement;
9.3.5 where at the Customer's request the Maintainer undertakes any alternation to the Equipment or extension cabling; or
9.3.6 where performance of the Maintainer's obligations is made materially more difficult or costly as a result of a breach of the Customer's obligations herein;
9.3.7 where at the Customer's request the Maintainer moves the Equipment to suitable alternative premises;
9.3.8 where the Maintainer supplies wiring, cabling and other components;
9.3.9 where additional or supplementary Maintenance Services are provided to the Customer including (but not limited to) access to a full time emergency telephone support service in response to an emergency Maintenance Service call.
9.4 All Supplementary Charges rendered pursuant to the Agreement shall be fair and reasonable having regard to all the circumstances in which the Maintenance Service giving rise to the Supplementary Charges arose.
9.5 The Maintainer shall not be obliged to undertake any works covered by the Agreement or any Supplementary Charges until cleared funds have been received in full and final settlement of any Charges or any other monies then due to the Maintainer from the Customer and where remedial action is undertaken to bring a customer's equipment back into service through the provision of replacement equipment due to damage outside the scope of the Maintenance Service, such charges must be paid in advance of any settlement via insurance companies should an insurance claim ensue. The Maintainer will assist but is not obliged to liaise with any insurance company or loss adjuster that becomes involved in such a claim. The Maintainer's invoice for replacement equipment must be paid regardless of any settlement of associated claims or any refusal by an insurance company to settle any claim.
9.6 All Supplementary Charges shall be paid in advance of necessary work being undertaken.
9.7 All charges payable hereunder are subject to VAT at the appropriate rates in force from time to time.
9.8 The Maintenance Service Charges shall be due and payable in full to CCC in accordance with the terms of the Agreement and the Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim. Any claims by the Customer shall be dealt with separately.
10. Responsibility of the Customer
10.1 The Customer agrees:-
10.1.1 to nominate a Customer Contact and to notify the Maintainer of any successor Customer Contact;
10.1.2 to make a Fault Report Call as soon as is reasonably practicable after a fault occurs;
10.1.3 to allow the Maintainer access at all reasonable times to the Equipment to allow the Maintainer to undertake the Maintenance Service upon the terms and conditions of the Agreement;
10.1.4 to care for and operate the Equipment in accordance with the Maintainer's and/or manufacturer's and/or supplier's instructions as applicable;
10.1.5 not to maintain service, repair, tamper with or adjust the Equipment or extension cabling;
10.1.6 to inform and request inspection by the Maintainer of any works undertaken in contravention of condition 10.1.4 and 10.1.5 and to undertake any corrective work to the Equipment within 14 days of any request;
10.1.7 to observe and comply with all common law and statutory regulations relating to health and safety;
10.1.8 to comply with all PTO requirements and arrange for the provision of any necessary PTO equipment;
10.1.9 to assist and co-operate with the Maintainer in the remedial action and checks referred to in Condition 6.2;
10.1.10 to indemnify the Maintainer against all claims arising in circumstances where:
10.1.10.1 the Maintainer is unable to maintain the Equipment in good working order due to causes within the Customer's control; or
10.1.10.2 the Customer has allowed the Equipment to be maintained; serviced, repaired, adjusted or tampered with other than by authorised engineers or agents of the Maintainer; or
10.1.10.3 the Customer has fitted attachments to the Equipment without the prior authority of the Maintainer;
10.1.10.4 to insure the Equipment and keep the same insured in a reasonable sum not less than its full replacement cost against events which may give rise to Supplementary Charges including so far as practicable those set out in condition 8.3
11. Liabilities
11.1 Except where otherwise expressly stipulated in the Agreement the following provisions set out the

Maintainer's entire liability (including liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach obligations arising under the Agreement
11.2 Nothing in the Agreement shall exclude or restrict the Maintainer's liability under UK statute to the Customer for death or personal injury resulting from its own or its employees or sub-contractor's proven negligence.
11.3 The Maintainer shall be liable to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Maintainer, its employees agents and sub-contractors PROVIDED THAT the Maintainer's entire liability in respect of such damage shall be limited to a maximum of £2 million.
11.4 Notwithstanding any other provision set out herein the Maintainer will not be liable to the Customer:
11.4.1 for any loss or damage resulting from delay in execution of any works to the Equipment caused by unforeseen circumstances;
11.4.2 for loss of profit, business, goodwill, use of the system, nor any other indirect or consequential loss whatsoever (including loss or damage suffered by the Customer as a result of any causes other than ordinary use) attributable to delay or failure to provide the Maintenance Service;
11.4.3 for any loss or damage whatsoever to any apparatus not included as part of the Equipment; or
11.4.4 for any loss or damage caused as a result of failing to provide the Maintenance Service in accordance with this Agreement or at all due to force majeure including (but without prejudice to the generality of the fore-going) acts of God, refusal of licence, fire, industrial dispute, difficulties in obtaining necessary material or any other factors beyond the Maintainer's reasonable control;
11.5 All other express or implied terms, conditions or warranties and any other liability in contract tort or otherwise are hereby excluded;
11.6 Nothing contained within the Agreement shall detract from any of the Customer's rights or the Maintainer's obligations which it is under English law prohibited from seeking to exclude or limit.
12. Assignment
12.1 The Customer shall not assign or transfer its rights and obligations under this Agreement or any part thereof to any other person, firm or company without the prior written consent of the Maintainer such consent not to be unreasonably withheld.
12.2 The Maintainer may assign its rights and obligations or sub-contract some or all of its obligations under this Agreement to any other company PROVIDED ALWAYS that in all circumstances where the Equipment comprises or includes Relevant Apparatus any such assignee or sub-contractor must be an approved and qualified contractor according to appropriate prevailing legislation and PROVIDED FURTHER that in those circumstances the primary liability for the observance and performance of the Maintenance Services pursuant to the Agreement shall remain that of the Maintainer.
13. Miscellaneous
13.1 This document (with any authorised signed addendums attached hereto) contains the entire terms of the Agreement between the parties and any pre-contractual representations made by either party to the other and hereby excluded
13.2 The Agreement may not be amended except in writing signed by the authorised representatives of the Maintainer and the Customer
13.3 If any provision of this Agreement shall be rendered invalid, illegal or unenforceable, the remaining provisions shall be unaffected and remain in force.
13.4 All headings contained herein are for ease of reference only and shall not affect the construction or interpretation of the Agreement
13.5 The Agreement shall be governed and construed in accordance with English law.
13.6 Further terms and conditions, terms of use and privacy policies can be found on our website: <http://www.customercaregroup.co.uk/about-us/terms-and-conditions/>
14. Notices
14.1 Any notice to terminate given pursuant to condition 5.1, 5.2 or 5.3 shall be given in writing and by recorded delivery mail (receipts must be provided upon request)
14.2 Any notice, invoice or other document to be given by one party to the other under these conditions shall be in writing addressed to that other at its registered office or principal place of business or such other address as may be the relevant time have been notified pursuant to and making specific reference to this provision to the party giving the notice, invoice or other document. Notices, invoices or other documents shall in the case of the Customer be given by pre-paid recorded delivery first class post and in the case of CCC by pre-paid first class post (which may be recorded delivery) or by facsimile transmission report showing a transmission in full without error to the correct fax number of the Customer.
14.3 Notices, invoices and other documents sent by post shall be deemed to be served 48 hours after posting. Notices served by facsimile transmission shall be deemed to be served immediately, provided that a hard copy of such transmission is sent to the Customer by first class pre-paid post on the same day.
15. Confidentiality
15.1 If during the performance of its obligations under this Agreement the Maintainer is exposed to any information of the Customer which the Customer identifies as being of a confidential or sensitive nature the Maintainer shall respect the confidentiality of such information and will not use it save insofar as its use is necessary in the performance of its obligations under this Agreement and the Maintainer shall restrict dissemination of such information to its employees on a need to know basis.
15.2 The obligations accepted by the Maintainer under condition 15.1 shall not apply to any material which is:-
15.2.1 already known to the Maintainer;
15.2.2 public knowledge or enters the public domain without fault on the Maintainer's part;
15.2.3 lawfully received from a third party not under a duty of confidentiality to the Customer;
15.2.4 ordered to be disclosed by a court or other tribunal of competent jurisdiction