

TCS

MAINTENANCE AGREEMENT TERMS AND CONDITIONS

Your attention is called to clause 8 which explains how TCS limits its liability.

Our Customer Service and Fault Notification number is 0113 205 9640. Please note that we sometimes monitor or record telephone calls for training purposes and our normal business hours are Monday to Friday (excluding Bank Holidays) 09:00 to 17:00.

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions:

(1) "Additional Equipment" means any equipment in addition to or substituted for the Equipment during the term of the Maintenance Agreement.

(2) "the Maintenance Agreement" means the maintenance agreement between TCS and the Customer made subject to these terms and conditions.

(3) "the Charges" means the annual maintenance charge to be calculated and payable by the Customer to TCS in accordance with clause 2.

(4) "Commencement Date" means the date specified as such in the Maintenance Agreement.

(5) "the Customer" or "you" means the person named as the Customer in the Maintenance Agreement.

(6) "Equipment" means the equipment specified in the Maintenance Agreement.

(7) "Infrastructure" means all or any of the supply of electricity or other utilities, the provision of services by the Network Providers, the condition of the Site and your existing equipment and any other conditions being available or suitable for the provision of the Services.

(8) "Initial Term" means the period of 36 months from the Commencement Date.

(9) "Maintenance Agreement" means the maintenance agreement made between TCS and the Customer

(10) "Retail Price" means the recommended retail price of the Equipment shown in the Maintenance Agreement or in the case of any Additional Equipment the recommended retail price of that Additional Equipment at the time of sale of that Additional Equipment.

(11) "Site" means the place or places specified in the Maintenance Agreement or such other place where the Equipment is installed.

(12) "TCS", "the Maintainer", "us" or "we" means Time Communication Solutions Limited (Company Number 04164139) whose registered office is at 1 Newmarket Mews, Castle Gate, Stanley, Wakefield, WF3 4AL.

(13) "VAT" means value added tax or any tax which may replace VAT.

1.2 Headings are for ease of reference and shall not affect the construction of these terms and conditions.

1.3 Unless otherwise stated, references to clauses are to the clauses in these terms and conditions.

1.4 The singular shall be deemed to include the plural and vice versa and reference to one gender shall include reference to the other two.

1.5 If the Customer comprises more than one person then the obligations of the Customer shall be joint and several.

2. Commencement and Term

2.1 TCS will provide a maintenance service in respect of the Equipment for the Initial Term from the Commencement Date. The term of the Maintenance Agreement will be automatically renewed for a further period of twelve months after the end of the Initial Term and for successive further periods of twelve months after that unless not less than three months before the end of the Initial Term or not less than three months before the end of any subsequent twelve months period you or we give notice to terminate the Maintenance Agreement at the end of the relevant period.

2.2 The Charges for the initial period of twelve months shall be included in the price if the Equipment is supplied by us. For each subsequent year during the continuation of the Maintenance Agreement the Charges shall be ten per cent of the Retail Price on the first anniversary of the Commencement Date and thereafter the Charges shall increase by five percent on each subsequent anniversary of the Commencement Date.

2.3 The Charges for any Additional Equipment shall be ten percent of the Retail Price of any Additional Equipment installed before any anniversary of the Commencement Date and thereafter the Charges shall increase by five per cent on each subsequent anniversary of the Commencement Date.

2.4 If the Equipment shall include equipment or any part of a communication system which has not been supplied or installed by us and we agree to maintain that equipment then the Charges applicable to that Equipment for the first twelve months of the Initial Term shall be set out in the Maintenance Agreement or agreed between us and you before the signing of the Maintenance Agreement and the Charges for each subsequent year during the continuation of the Maintenance Agreement shall increase by five per cent on each anniversary of the Commencement Date.

2.4 The Charges for each year during which the Maintenance Agreement continues shall be paid before the Commencement Date or each anniversary of the Commencement Date together with any applicable VAT.

2.5 If notice is given to terminate the Maintenance Agreement by the Customer before the expiry of the Initial Term or if we shall give notice to terminate the Maintenance Agreement by reason of your default then payment will be due from the Customer to TCS for all sums which would have been payable before the end of the Initial Term.

3. Maintenance and Repair

3.1 In consideration of the payment of the Charges, TCS shall after the Commencement Date provide a maintenance engineer to carry out during its normal business hours any maintenance or repairs and replacements of the Equipment that may be reasonably requested by the Customer and shall carry out free of any extra charge any maintenance repairs and replacements (including the

provision of any necessary materials and spare parts) as shall be necessary as a result of fair wear and tear arising from the proper operation of the Equipment.

3.2 Any maintenance repairs or replacements or customer visits caused other than by fair wear and tear may be carried out by TCS at the Customer's expense at the our current charges. The targeted response times during our normal working hours for faults are minor faults sixteen working hours and critical fault four working hours. The Maintainer will endeavour, but not guarantee to achieve these guideline timescales. All maintenance, repairs or replacements may be carried out at the Site or elsewhere at our option.

3.3 The Maintenance Agreement does not cover the following items.

(1) overhead, underground, internal or external cabling or any other Infrastructure.

(2) headsets, non Mitel two wire telephone handsets, non Mitel cordless handsets, conference units, battery back-up, door phones, routers, network switches, PoE (Power over Ethernet supplies) and PremiCell/GSM Gateways. These are all covered by the 12 months return to base manufacturer's warranty.

4. Alterations to Equipment and Extension Wiring

4.1 The cost of all alterations to apparatus and extensions to wiring (including removal and re-installation to a new site) shall be carried out by TCS but are not included in the Charges and shall be payable by you in addition to the Charges.

4.2 Any alterations to Equipment and wiring shall be notified to TCS not less than 14 working days before the commencement of the works.

4.3 We may adjust the Charges if the Equipment is altered, upgraded or added to and these changes shall be included on the next available maintenance renewal invoice.

5. The Customer's Responsibilities and Liabilities

5.1 The Customer shall notify TCS either orally or in writing as soon as possible of any faults in the Equipment or any work or maintenance that may be necessary. We may at our option repair at our current charges faults or damage that has arisen because of the failure of the Customer to notify us promptly.

5.2 The Customer shall not allow the Equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by us in relation to the use and care of the Equipment. We may at our option repair at our current charges faults or damage that have been caused by such moving interference or tampering or by any failure by the Customer to comply with our directions.

5.3 If any maintenance, repair, replacement, alteration or addition is made to the Equipment other by than TCS, we may terminate the Agreement with immediate effect by giving the Customer written notice and in that event we shall be entitled to retain any Charges paid by you.

5.5 The Customer shall give TCS and its representatives unhindered access to the Equipment and shall at its expense make available mains electric supply and any other facilities and co-

operation as may be necessary for the proper and prompt maintenance or repair of the Equipment under the Maintenance Agreement.

5.6 The Customer shall maintain an environment suitable to support efficient operation of the Equipment. The Customer shall be responsible for damage caused by not maintaining a suitable room operating temperature for the Equipment or any Software.

5.7 It shall be your responsibility to ensure that your computer system is not capable of being affected by any remote access we gain to the Equipment for the installation of any Software Assurance Upgrades or otherwise maintaining the Equipment.

5.8 If you fail to allow us to install any Software Upgrades within one month of us notifying you that any Software Upgrade is available for installation, we may terminate this agreement by giving one month's written notice to you.

6. Suspension of Service

TCS may suspend the Maintenance Agreement (without being liable to compensate you):

- (1) in the event of an emergency;
- (2) to comply with a request from a government or other competent authority;
- (3) to protect or provide service to rescue or other essential services or otherwise;
- (4) an event occurs which is a Relevant Event described in clause 25.1;
- (5) if you break any part of the Maintenance Agreement.

7. Termination

7.1 The Maintenance Agreement may be ended immediately by written notice:

- (1) by you if TCS breaks any term of the Maintenance Agreement, which after written notice has not been rectified within fourteen days;
- (2) by TCS if you stop trading or becomes insolvent or are wound up;
- (3) by TCS if you break any term of the Maintenance Agreement;
- (4) if you are a company and control of the company is changed within the meaning of sections 450, 451 or 1124 Corporation Tax Act 2010.

7.2 On termination of the Maintenance Agreement for whatever reason, you will:

- (1) immediately pay any outstanding invoices.
- (2) be responsible for any required engineering reprogramming costs for you to use an alternative supplier or maintainer.

8. Liability

8.1 TCS will not:

(1) be liable for any harm to your business, loss of revenues, loss of anticipated savings, lost profits or other indirect consequential or special losses;

(2) be liable to you or to any third party for any losses suffered by that third party.

8.2 Our liability in contract or tort arising from any default by us under or in connection with the Maintenance Agreement shall be limited to a refund of the Charges for the last 12 months.

8.3 TCS does not seek to limit its liability for death or personal injury resulting from the negligence of TCS, its employees or others for whom it is responsible.

8.4 TCS shall not be liable for the consequences of any failure of any of the Infrastructure or for any damage caused by electrical surges through the power supply or power surges caused by external influence such as that caused by lightning strike or similar.

8.5 You acknowledge that the price of the services provided by TCS in accordance with the Maintenance Agreement reflects the limitations contained in this clause 8. You shall effect insurance cover in respect of all risks relating to such services which are not covered by the Maintenance Agreement or for the liabilities excluded under this clause 8 or if such risks cannot be insured by the Customer the Customer shall pay TCS for any additional insurance cover it may obtain at the request of the Customer.

8.6 If any of the provisions of clause 8 are not valid or enforceable those provisions shall be deemed to be excluded to the intent that the remaining provisions shall be valid and enforceable.

9. Force Majeure

9.1 Neither TCS nor you will have to compensate the other for any detrimental event beyond the other's reasonable control including (without limitation) any act of God, reduction or failure of power supply, other telecommunications operators and suppliers or their equipment including access lines, act or omission of national or local government authority, war, act of terrorism, military operation, riot or delay or employee dispute (a "Relevant Event").

9.2 If a Relevant Event shall prevent the performance by us of the Maintenance Agreement for more than 3 months then we may terminate the Maintenance Agreement.

10. Notices

10.1 Any notice required to be served under the Maintenance Agreement must be in writing. The address for service on TCS (subject to any change notified by TCS to you) is the address stated in the Maintenance Agreement. Your address for service is the address set out in the Maintenance Agreement or (if different) on the most recent invoice we have sent to you or such address as has been notified to TCS in accordance with this clause.

10.2 A notice will be treated as served as follows:-

(1) in the case of delivery by hand, on the day of delivery except that where that day is not a Working Day, or the delivery is made after four pm, then it will be treated as served on the next Working Day;

(2) in the case of delivery by registered post or recorded delivery, on the date of delivery as proved by the proof of delivery advice issued by Royal Mail (or such other postal service providing a registered or recorded delivery service in place of or in addition to Royal Mail).

In this clause "Working Day" means Monday to Friday but does not include Bank Holidays.

11. General

11.1 You may not transfer the Maintenance Agreement or any rights under it without our prior written consent.

11.2 TCS may transfer all or any of its rights under the Maintenance Agreement.

11.3 TCS may engage such sub-contractors or agent to provide the Services as it shall determine.

11.4 If any provision or condition of the Maintenance Agreement shall be invalid or unenforceable, the remaining terms shall continue to apply.

11.5 Any variations (other than changes made in accordance with the Maintenance Agreement) shall not be effective unless in writing and signed by you and by a director of TCS

11.6 Any failure by TCS to enforce any right shall not be deemed a waiver of any such right.

11.7 Unless agreed otherwise by us the Services will only be provided during our normal business hours which are Monday to Friday (excluding Bank Holidays) 09:00 to 17:00.

11.8 The Maintenance Agreement is governed by English law and the parties agree to submit to the exclusive jurisdiction of the Courts in England.

11.9 The Maintenance Agreement constitutes the entire agreement between the parties and there are no agreements or understandings between them other than those in the Maintenance Agreement. For the avoidance of doubt it is agreed that any proposal made by TCS does not form part of any Agreement.

6 April 2017