

**SOUTHERN COMMUNICATIONS LIMITED
MAINTENANCE TERMS AND CONDITIONS**

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 7.

1. INTERPRETATION

1.1. In these terms and conditions ("**Terms**") the following expressions shall have the following meanings and the rules of interpretation shall apply:

Charges: the charges payable for the Maintenance Services as set out in the Order Form and as may be amended from time to time in accordance with Clause 6.8;

Company: means Southern Communications Limited (Company Number: 01328040) whose Registered Office is at Glebe Farm, Down Street, Dummer, Hampshire, RG25 2AD;

Contract: the Customer's order and the Company's acceptance of it in accordance with Clause 2 incorporating these Terms;

Customer: the person(s), firm or company who purchases the Maintenance Services from the Company and as set out in the Order Form;

Equipment: the supported Equipment as set out in the Order Form;

Fault: a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Equipment;

Installation Address: as set out in the Order Form;

Order Form: the equipment order form;

Maintenance Services: includes (as appropriate) the Support Service and any other services requested by the Customer as more fully set out in the Order Form or as agreed in accordance with Clause 4.10;

Support Service: the support service to be provided by the Company to the Customer pursuant to Clause 4.2;

Support Hours: 8.30 am to 5.00 pm Monday to Friday, except on days which are bank holidays in England;

Supported Equipment: has the meaning set out in Clause 3.1.

2. APPLICATION OF TERMS

2.1. Each request for Maintenance Services by the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Maintenance Services subject to these Terms. Subject to any variation under Clause 19 the Contract will be on these Terms to the exclusion of all other terms and conditions.

2.2. These Terms shall:

2.2.1. apply to orders made by the Customer;

2.2.2. apply to and be incorporated in the Contract; and

2.2.3. prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, specification or other document or

implied by law, trade custom, practice or course of dealing or simply as a result of such document being referred to in the Contract.

- 2.3. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company starts to provide the Maintenance Services to the Customer.

3. SUPPORTED EQUIPMENT

- 3.1. The Supported Equipment is:

3.1.1. the Equipment; and

3.1.2. any other equipment which the Company and Customer agree should be Supported Equipment for the purposes of the Contract.

4. THE SERVICES

- 4.1. The Company shall supply and the Customer shall take and pay for the Maintenance Services.

- 4.2. The Support Service shall be provided during the Support Hours and shall comprise:

4.2.1. remote diagnosis;

4.2.2. a site visit by the Company's service engineer if the Fault is not resolved remotely in accordance with Clause 4.2.1;

4.2.3. maintenance of the Equipment at the Installation Address (or such other address as may be as may be agreed in writing by the Company) in efficient working order and during the term of the Contract; and

4.2.4. all repairs and replacements to the Equipment necessitated by fair wear and tear and/or faulty workmanship and/or faulty materials provided that the Customer shall have duly notified the Company of any Fault. The Customer acknowledges and agrees that such repair or replacement may be carried out by any servant, agent or contractor of the Company;

- 4.3. The Company shall use its reasonable endeavours to ensure that the Support Service is provided within the Support Hours, based on an 8 hour response time.

- 4.4. If additional on-site support is required in any month it may be provided by the Company at its option at the Company's then standard rates.

- 4.5. The Company shall be entitled, on prior notice to the Customer, to make changes to the Maintenance Services, provided such changes do not have a material adverse affect on the Customer's business operations.

- 4.6. The Customer shall not repair, adjust, tamper with or alter the Equipment or extension wiring to the Equipment. In the event that the Customer requires any alterations to the Equipment or extension wiring the Customer shall give the Company 14 days prior written notice. In the event that any alterations are carried out by an agent not appointed by the Company the Customer shall allow the Company the right of inspection of that work. Should the work carried out by such agents (in the Company's sole opinion) be found to be unsatisfactory the Customer shall remedy the defect within 90 days of inspection or pay the Company's charges for effecting the remedy.

- 4.7. The Company shall have no obligation to provide the Maintenance Services where Faults arise from:

- 4.7.1. misuse, incorrect use of or damage to the Equipment caused by the Customer, its employees, agents or subcontractors or causes other than ordinary use; or
 - 4.7.2. failure by the Customer to maintain the necessary environmental conditions for use of the Equipment including without limitation maintaining the location where the Equipment is installed at normal room temperature and in a well ventilated area; or
 - 4.7.3. use of the Equipment by the Customer in combination with any equipment not provided by the Company, or any Fault in any such equipment; or
 - 4.7.4. relocation or installation of the Equipment by any person other than the Company or a person acting under the Company's instructions; or
 - 4.7.5. defects in the electricity supply, third party telephone service and connections and/or host PBX systems; or
 - 4.7.6. any surge of electrical power; or
 - 4.7.7. any fault, failure or change in the electricity supply service and/or host PBX systems;
 - 4.7.8. exposure of the Equipment to adverse weather conditions; or
 - 4.7.9. any breach of the Customer's obligations under these Terms.
- 4.8. The Company shall not be liable for costs of making good defects in the overhead and underground cables from any associated wiring.
- 4.9. Any service calls carried out by the Company for an event set out in Clauses 4.7 or 4.8 shall be an optional service and will be charged to the Customer in accordance with Clause 6.3 or at the Company's standard charges for such optional service.

Orders for Optional Services

- 4.10. The Customer may from time to time request the Company to supply optional services. Such optional services may include:
- 4.10.1. services where failure of the Equipment is subsequently found to be due to mis-operation of failure of third party equipment and/or host PBX systems and/or electricity supply service or is any person not authorised by the Company to do so shall have tampered with the Equipment;
 - 4.10.2. alterations to the Equipment or extension wiring;
 - 4.10.3. moving the Equipment to alternative premises where in the opinion of the Company suitable service and reception facilities exist provided the Equipment does not thereby pass out of the possession or control of the Customer.
- 4.11. Charges for optional services shall be at the Company's then standard rates.
- 4.12. The Company shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that the Company's ability to supply the optional services shall depend on the availability of appropriate resources at the time in question.
- 4.13. Where the Company agrees to provide optional services, such Agreement shall be embodied in an order for optional services. Each order for optional services shall be made under, and shall incorporate these Terms.

5. FURTHER TERMS RELATING TO THE SERVICES

- 5.1. The Company's obligation to provide on-site services shall extend to the Installation Address.
- 5.2. The Company shall ensure that, while at the Installation Address, the Company's employees, agents and representatives and all other persons who enter such premises with the authority of the Company for the purpose of, or in connection with, these Terms or the provision of the Maintenance Services adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Company or otherwise brought to the notice of the Company or such persons. The Customer shall be entitled to remove or to refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Company shall incur no liability for any delay in performing or failure to perform its obligations under these Terms as a result of compliance with the terms of this Clause 5.2.

6. CHARGES

- 6.1. In consideration of the Maintenance Services (excluding for this purpose any optional services), the Customer shall pay the Charges. Such Charges shall be paid annually in advance by the Customer to the Company within:
- 6.1.1. 30 days of the date of the Company's invoice; or
- 6.1.2. one month prior to each anniversary of the Contract
- whichever is later.
- 6.2. The Company shall endeavour to issue its invoice one month before each anniversary of the Contract.
- 6.3. Where possible, the Charges for optional services shall be agreed in writing prior to performance or supply by the Company, and shall be charged and invoiced to the Customer by the Company (and paid by the Customer) following acceptance by the Company of the Customer's written order for such optional services.
- 6.4. The Customer shall pay all costs (at the Company's then prevailing rates) and reasonable expenses incurred by the Company for work carried out by the Company in connection with any fault which is not covered by these Terms including without limitation work carried out by the Company for reprogramming and/or service visits as a result of a programming error caused by the Customer or its agent.
- 6.5. The Customer shall reimburse any reasonable travel or subsistence expenses incurred by the Company where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Maintenance Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 6.6. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:
- 6.6.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 6.6.2. suspend all Maintenance Services until payment has been made in full.
- 6.7. All amounts payable under these Terms shall be exclusive of value added tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.

6.8. The Company shall be entitled to increase the Charges as from each anniversary of the date of the Contract.

7. THE SUPPLIER'S WARRANTIES AND LIMITS OF LIABILITY

7.1. The Company represents and warrants to the Customer that the Maintenance Services will be performed:

7.1.1. in accordance with all applicable laws and regulations; and

7.1.2. with all reasonable skill and care; and

at the date of the Contract, the Company has obtained and will maintain for the duration of the Contract all permissions, licences and consents necessary for the Company to perform the Maintenance Services.

7.2. If, during the term of the Contract, the Company receives written notice from the Customer of any breach by the Company of the representation and warranties contained in Clause 7.1, the Company shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the Contract immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Company under the Contract during the year in which the termination occurs, less a charge for the Maintenance Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Company to comply with its obligations under Clause 7.1. This Clause sets out the Customer's sole remedy and the Company's entire liability for breach of Clause 7.1.

7.3. No representation or warranty is given by the Company that all Faults will be fixed or will be fixed within a specified period of time. The Company shall not be liable for any delay in the execution of any work of installation, repair, replacement, alteration or removal of or to the Equipment howsoever caused.

7.4. Subject to Clause 7.7, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.

7.5. Subject to Clause 7.7 the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

7.5.1.1. loss of profits; or

7.5.1.2. loss of anticipated savings; or

7.5.1.3. loss of business; or

7.5.1.4. depletion of goodwill or similar losses; or

7.5.1.5. loss of contract; or

7.5.1.6. loss of use; or

7.5.1.7. loss or corruption of data or information; or

7.5.1.8. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

7.6. Subject to Clause 7.7, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 1.5

times of the aggregate Charges paid by the Customer in accordance with the Contract during the twelve months preceding the date acknowledged by the Company as being the date of the event giving rise to any liability.

7.7. The Company's liability to the Customer for:

7.7.1. death or personal injury caused by the negligence of the Company; or

7.7.2. fraud or fraudulent misrepresentation; or

7.7.3. any other liability which cannot be excluded by law

shall not be limited.

8. THE CUSTOMER'S RESPONSIBILITIES

8.1. Without prejudice to Clause 5.2, the Customer shall provide the Company, its employees, agents and representatives and all other persons duly authorised by the Company with full, safe and uninterrupted access including without limitation remote access to the Customer's premises, the Installation Address and the Equipment as may reasonably be required for the purpose of performing the Maintenance Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Support Hours. The Customer shall provide adequate working space and office (including telephone) facilities for use by the Company's personnel and take reasonable care to ensure their safety.

8.2. The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Equipment and shall take all reasonable steps to ensure that the Supported Equipment is operated in a proper manner by the Customer's employees and agents.

8.3. If the Equipment is to be connected to third party telecoms apparatus, the Customer shall at the Customer's expense arrange for and maintain the provision of any third party apparatus specifically required for the Customer's use of the Equipment.

8.4. The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Company (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

8.5. The Customer shall:

8.5.1. verbally report all Faults or details of any required repairs promptly to the Company;

8.5.2. co-operate with the Company in performing the Maintenance Services and provide any assistance or information as may reasonably be required by the Company.

8.6. The Customer shall indemnify the Company against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Company as a result of the Customer's breach of these Terms or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

9. DISPUTE RESOLUTION

9.1. It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of these Terms. Accordingly, it is agreed that the procedure set out in this Clause 9 shall be followed prior to the serving of written notice terminating the Contract, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

9.2. In the event that any disagreement or difference of opinion arises out of these Terms, the matter shall be disposed of as follows:

9.2.1. the Customer's account manager and the technical support manager of the Company shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then

9.2.2. the matter shall promptly be referred by either party to a director of the Customer and the technical director of the Company for immediate resolution.

9.3. If, within 14 days of the matter first having been referred to the appropriate directors of each party, no agreement has been reached as to the matter in dispute, the dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by these Terms in respect of such matter without further reference to the dispute resolution process.

10. **NON-SOLICITATION**

10.1. The Customer shall not, for the duration of the Contract and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Company who has been engaged in the provision, receipt, review or management of the Maintenance Services or otherwise in connection with the Contract to leave the employment of the Company.

11. **FORCE MAJEURE**

11.1. Subject to due compliance with Clause 11.2, neither party shall be liable to the other for any delay or non-performance of its obligations under these Terms arising from any cause beyond its reasonable control including, without limitation, strikes, lock outs, labour disputes, act of God, governmental act, war, riot, fire, flood or storm, explosion or civil commotion.

11.2. In the event of either party being so delayed or prevented from performing its obligations, such party shall:

11.2.1. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

11.2.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under these Terms; and

11.2.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

11.3. In the event that such delay or prevention continues for more than three months, the party whose performance is not delayed or prevented may terminate these Terms on 30 days' written notice to the other party, in which case the provisions of Clause 14 shall apply.

12. **TERM**

12.1. Supply of the Maintenance Services by the Company to the Customer shall commence on date of system live date and, subject to termination in accordance with the provisions of these Terms, shall continue for a fixed term of one (1) year or as otherwise specified in the Order Form (the **Initial Term**). Following expiry of the Initial Term, the supply of the Maintenance Services shall (subject as aforesaid) continue under these Terms from year to year until terminated by either the Company or the Customer on three (3) months written notice, such notice to expire on an anniversary of the date of these Terms.

13. **TERMINATION**

13.1. Each party shall have the right, without prejudice to its other rights or remedies, to terminate these Terms immediately by notice to the other if the other:

- 13.1.1. is in material or persistent breach of any of its or its obligations under these Terms and either that breach is incapable of remedy, or that other party has failed to remedy that breach within 14 days after receiving written notice requiring it to do so; or
 - 13.1.2. is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 13.2. The Company shall have the right, without prejudice to its other rights or remedies, to suspend the Maintenance Services or terminate these Terms (at the Company's sole discretion) immediately by notice to the Customer if the Customer:
- 13.2.1. undergoes a change of control; or
 - 13.2.2. sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
 - 13.2.3. is abusive, obscene, racist or harassing to the Company or any of its employees, agents or representatives; or
 - 13.2.4. is in breach of Clause 4.5.

14. CONSEQUENCES OF TERMINATION

- 14.1. On expiry or termination of the Contract:
- 14.1.1. the Customer's right to receive the Maintenance Services shall cease automatically;
 - 14.1.2. each party shall immediately return to the other all property and materials containing Confidential Information (as defined in Clause 16) belonging to the other; and
 - 14.1.3. all amounts due from the Customer under these Terms shall be paid immediately by the Customer.
- 14.2. Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of these Terms which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

15. ASSIGNMENT AND SUB-CONTRACTING

- 15.1. The Customer may not assign, sub-license, sub-contract, mortgage or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.
- 15.2. The Company may assign, sub-license, sub-contract, mortgage, novate or otherwise transfer any of its rights or obligations any of its obligations under these Terms.

16. CONFIDENTIALITY AND PUBLICITY

- 16.1. Each party shall, during the term of the Contract and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other disclose to any third party, any and all information of a confidential nature (including trade secrets and

information of commercial value) that may become known to such party from the other party, and which relates to the other party (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms, or subsequently comes lawfully into the possession of such party from a third party.

16.2. These Terms may not be disclosed by the Customer (other than to its legal advisers) without the prior written consent of the Company.

16.3. The provisions of Clause 16 shall remain in full force and effect notwithstanding any termination of these Terms.

17. **WAIVER**

17.1. No failure or delay on the part of either party to exercise any right or remedy under these Terms shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

18. **SEVERABILITY**

18.1. If any provision or part of these Terms is held to be invalid, amendments to these Terms may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of these Terms to the maximum extent permissible under applicable law.

19. **VARIATIONS**

19.1. Any amendment, waiver or variation of these Terms shall not be binding on the parties unless set out in writing, expressed to amend these Terms and signed by or on behalf of each of the parties.

20. **THIRD PARTY RIGHTS**

20.1. For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Contract is made for the benefit of the parties to it and the Contract is not intended to benefit or be enforceable by anyone else.

21. **NOTICES**

21.1. Any notice or other document to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in the Order Form, or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

22. **ENTIRE AGREEMENT**

22.1. It is acknowledged and agreed that these Terms (including the documents and instruments referred to herein) (the **Documents**) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

22.2. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

22.3. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

23. **GOVERNING LAW AND JURISDICTION**

23.1. This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

This Agreement has been entered into on the date stated at the beginning of it.