

# Corrective Maintenance



## By this agreement

### 1. Definitions

- The **“Company”** means Direct Telecommunication (London) Limited and the assigns of Direct Telecommunication (London) Limited.
- **“We”, “Us” “Our”** means Direct Telecommunication (London) Limited, and its successors in title and assigns from time to time.
- **“You”, “Your”** The Customer named on the maintenance agreement at whose request We agree to provide the service under this contract and by whom the charges are payable.
- **“End User”** and **“Customer”** means the person or company identified as such in the maintenance agreement.
- The **“Equipment”** means the equipment purchased from and through the Company. The Customer confirms that it is the legal and beneficial owner of the Equipment or is authorised by the said legal and beneficial owner to enter into this Agreement.
- The **“Premises”** means the premises at which the Equipment is situated.
- The **“Service Provider”, “Supplier”, “Provider”** means Direct Telecommunication (London) Limited
- The **“Reasonable Times”** shall be Monday to Friday 9am to 5pm
- **“Notice”** shall mean by Email or Recorded delivery
- **“Corrective Maintenance”** shall mean the maintenance activities performed to fix a known problem or failure on equipment, machinery, or systems

### 2. Corrective Maintenance and Repair

1. The Customer shall notify the Company verbally as soon as possible of any fault in the Equipment or services. The Customer shall thereafter notify the Company in writing of any such faults, but the Company accepts no responsibility for non-performance of its maintenance obligation if verbal notification is not so confirmed in writing.
2. The Company shall, as soon as reasonably practicable firstly determine if a technician is required to go to the premises or if other suppliers are responsible. Such repairs may be carried out at the Premises or at the Company’s workshop at the option of the Company. Any additional repairs or replacements or service visits not covered by this Agreement (for example, trunk line faults or maintenance required because of the Customer’s or a third party’s incorrect use of the Equipment) shall be carried out at the Customer’s expense at the Company’s then-current charges (which are available on request).
3. Replacement of consumable or expendable items (if any) shall be charged to the Customer at the Company’s then-current charges (which are available on request). For the avoidance of doubt headsets are treated as consumable items.
4. Where replacement parts or other items are supplied by the Company and a separate charge is due for such parts or items pursuant to the terms of this Agreement, property in the parts or items shall not pass to the Customer unless and until the full price has been paid by the Customer for those parts or items.
5. The Company and its duly authorised representatives shall have access to the Premises at all reasonable times to perform during the continuance of this Agreement but will only be responsible for any damage to the Premises during the carrying out of such operations by reason of negligence or wilful default but not otherwise. If the Customer fails to allow the Company or its duly authorised representatives such access, the Company shall be under no obligation to carry out the maintenance requested by the Customer.
6. For the avoidance of doubt, this Agreement does not cover any piece of equipment not included in the definition of the Equipment, any services or performance that are beyond the scope of this Agreement or maintenance of the Equipment’s environment (including the Customers premises or surrounding installations )

### 3. Customer Responsibilities

In addition to the responsibilities and/or obligations set out elsewhere in this Agreement:

1. The Customer will maintain the environmental conditions recommended by the manufacturer(s) of the Equipment and/or the Company from time to time.
2. The maintenance charge shall be paid in accordance with the provisions set out in the maintenance agreement. Any other charges under the terms of this Agreement shall become due for payment within thirty days of the invoice. Should any sum owed to the Company become overdue, the Company shall advise both the Customer and the relevant authority in writing giving both notice of suspension of service rendering the system liable to disconnection from the public network as described in the Telecommunications Act 1984.
3. The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representative who visits the Premises.
4. The Customer is responsible for maintaining the security of the equipment and shall take all such reasonable steps as may be necessary.

### 4. Interference

The Equipment shall not be moved, interfered or tampered with in any way by the Customer and the Customer always will comply with all reasonable directions given by the Company in relation to the operation and care of the Equipment. Maintenance, repair, replacements, alterations and additions to the Equipment may only be carried out by the Company.

### 5. Liability of the Company

1. The liability of the Company under this Clause is in lieu of any condition or warranty implied by law as to the quality or fitness for any particular purpose of the Equipment. Save as expressly provided for herein, neither the Company nor its servants, agents or sub-contractors shall be liable for any defects in the Equipment or for any loss or damage (whether direct, indirect or consequential) or for any costs or expenses that may be suffered by the Customer whether resulting from any such defects or from any work done or omitted to be done in connection with the Equipment or the installation, maintenance, repair or servicing thereof, or from the incorrect setting of line "switching" equipment or from a third party succeeding in "hacking" into the Customer's Equipment, other than that arising through the wilful default of the Company, its servants, agents or sub-contractors or, in respect of death or personal injury caused thereby, the negligence of the Company, its servants, agents or sub-contractors. For this clause indirect or consequential loss or damage shall include any loss of profits or income or business of whatsoever kind.
2. Notwithstanding, the above provisions of the Clause, if the Company, its servants, agents or sub-contractors are held liable to compensate the Customer, the liability of the Company, its servants, agents or sub-contractors shall in no event exceed, in respect of any claim or series of claims arising from the same event, to the amount for which the Company is reasonably able to obtain insurance on reasonable terms taking into account, inter alia, the resources available to it and the nature of the risks concerned. In no event is the above to be taken as an assumption of liability by the Company, its servants, agents or sub-contractors in circumstances where they would not otherwise be legally liable.

### 6. Continuation

Subject to the provisions of this Agreement, this Agreement will continue after its first 12 months, unless and until terminated by either party hereto giving at least three months' notice in writing by Email or Recorded Delivery post to the other, expiring at the end of the original 12-month period or on any subsequent anniversary thereof.

### 7. Adjustment of Corrective Maintenance Charge

1. The Customer shall pay to the Company in advance the corrective maintenance charges specified on the maintenance contract or any subsequent variation thereof. The Company may charge the Customer for the maintenance on a monthly invoice, to be paid in advance

notwithstanding the agreement remains an annual agreement and the full 12 months must be paid.

## **8. Termination and Default**

1. The Company may, by giving written notice, terminate this Agreement in any of the following events:
  - a. in the case of the Customer who is an individual or which is a partnership, if the Customer or (as the case may be) any partner shall have a bankruptcy order made against him, or make or negotiate for any composition or arrangement with or assignment for the benefit of his creditors, or (if the Customer shall be a Company) shall have a receiver or administrator appointed, or shall suffer any execution or distress to be levied against it, or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts;
  - b. if any sum payable hereunder (or any sum due from the Customer to the Company is not paid on its due date (time of payment hereunder being of the essence); or
  - c. any other breach of this or any other agreement with the Company (unless such breach is capable of remedy in which case the Customer shall have 14 days to remedy such breach from the date of notice from the Company to the Customer, failing which this Agreement shall terminate)
2. If at any time payment due from the Customer to the Company under this Agreement is in arrears, the Company shall not be bound to perform any of its obligations hereunder unless and until payment has been duly made, but without prejudice to the Company's right of termination under sub-clause (a) above.
3. In the event of a breach of this Agreement by the Customer, the failure by the Company to exercise its rights of termination contained in Sub-clause (1) above shall not prevent the Company from exercising any other rights it may have resulting from such breach and shall be without prejudice to its right to terminate this Agreement pursuant to the terms of Sub-clause (1) in any event.
4. Without prejudice to the Company's right to terminate this Agreement, the Company reserves the right to charge interest at 4% above the Bank of England's base rate per month (both before and after judgement) on any payment due from the Customer to the Company that is not made by the due date.
5. Except as expressly provided in this 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.

## **9. Force Majeure**

The Company shall not be liable for any delay in the execution of any work of maintenance, repair, replacement, alteration, addition, removal or any other work of or to the Equipment due to any circumstances beyond the Company's reasonable control.

## **10. General**

1. This Agreement shall be conditional on acceptance by the Company. Such acceptance will be signified by this Agreement being duly signed on behalf of the Company by a duly authorised officer. A copy of this Agreement duly signed on behalf of the Company will then be despatched to the Customer. The date of signature by a duly authorised officer of the Company shall be the date of completion of this Agreement.
2. This Agreement supersedes and revokes in every respect all other Agreements (if any) concerning all or part of the maintenance of the Equipment, whether verbal or otherwise, between the Company and the Customer.
3. No waiver by the Company of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

4. Any advice or recommendation given by the Company, its employees, agents or sub-contractors to the Customer as to the application storage or use of the Equipment which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for such advice or recommendation not so confirmed.
5. This Agreement may only be varied or amended in writing signed by both the Company and the Customer, save as otherwise provided for herein.

## **11. Assignment**

11.a. The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under these Terms and Conditions.

11.b The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, providing that the Customer may assign the entirety of its rights and obligations under these Terms and Conditions to any Affiliate of the Customer or to any successor to all or a substantial part of the business of the Customer from time to time.

## **12. Verbal Arrangements**

1. No terms, warranties or representations other than those embodied in this Agreement shall be binding upon the Company and the Customer acknowledges that they have not accepted the conditions or entered into this Agreement in reliance on any such terms, warranties or representations. No variation or modification of this Agreement shall be effective unless accepted by the Company in writing.
2. The Company may assign, transfer or sub-contract this Agreement at any time without the prior agreement of the Customer.

## **13. Governing Law**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts.

## **14. Complaints**

Our Code of Practice on Complaint Handling and Dispute Resolution explains how customers can complain. The code also provides information on we deal with complaints and your right to take unresolved complaints to Alternative Dispute Resolution. You can find a copy of our Code of Practice on our website at [www.directtelecom.net](http://www.directtelecom.net) Alternatively, copies are available free of charge and on request

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