

Professional Services & Support Terms & Conditions

1 GENERAL

- 1.1 These conditions shall govern the contract to the entire exclusion of any other express or implied conditions.
- 1.2 Information or advice given orally or contained in the Company's publicity material, advertisements and catalogues and in any correspondence between the Company and the Customer before the start date of the Contract, is given gratuitously and without responsibility on the part of the Company, and shall not form part of this agreement unless specifically agreed in writing and signed by a duly authorised officer of the Company.

2 DURATION

- 2.1 Unless the provisions of paragraphs 3.4 or 10 apply:
 - 2.1.1 This agreement shall commence on the Start Date and continue until terminated by either party giving to the other prior written notice to be sent by recorded delivery to be received at least 42 days prior to any Valid Termination Date as defined in paragraphs 2.1.2 and 2.1.3 below.
 - 2.1.2 Where a Minimum Period has been agreed, the first Valid Termination Date is calculated at the Start Date plus the Minimum Period. Thereafter, Valid Termination Dates occur annually on the anniversary of Start Date.
 - 2.1.3 Where no Minimum Period has been agreed, Valid Termination Dates occur annually on the anniversary of Start Date.

3 INSPECTION OF INSTALLATION

- 3.1 If the Company has not carried out the installation of the equipment covered by this agreement and detailed in Appendix I, then it shall be entitled to carry out a pre-support inspection and test of the installed equipment. The inspection shall be subject to a supplementary charge payable by the Customer prior to the commencement of cover for the equipment inspected.
- 3.2 If in the opinion of the Company the installed equipment is not of a standard which is reasonable and capable of being supported, the Company will provide the Customer with a written estimate to restore the installation to such a standard.
- 3.3 If the Customer accepts the Company's estimate, the Company shall, without undue delay, endeavour to restore the installation to the required standard, provided that time is not of the essence in relation to the performance of this obligation.
- 3.4 If the Customer rejects the Company's estimate then the Company may (without affecting its accrued rights) terminate this Contract with immediate effect. The Company will return any funds received in payment for support under this contract within 42 days. The supplementary charge for the pre-support inspection remains payable in full and may be deducted from any funds returned to the Customer under the terms of this clause.

4 THE CUSTOMER'S OBLIGATIONS UNDER THIS AGREEMENT

4.1 The Customer agrees:

- 4.1.1 To pay the initial annual charge for service and support covering the equipment detailed in Appendix I on or before the Start Date of the agreement and thereafter annually on or before the anniversary of the Start Date.
- 4.1.2 To pay all other charges made by the Company in accordance with the provisions of this agreement by the end of the month following the date of the Company's invoice.
- 4.1.3 To pay any additional payment that may become due as a result of adjustments in accordance with paragraph 5 of this agreement, any such further payment to be paid by the end of the month following the date of the Company's invoice.
- 4.1.4 To provide immediate verbal notification to the Company of any fault or any repair which may be necessary, and to allow the Company's engineers to have full, free and timely access to the equipment and provide adequate working and storage space and such other facilities as the Company's engineers may reasonably require.
- 4.1.5 To ensure that the environmental conditions at the equipment location comply with all relevant statutory and other legal requirements at all times.
- 4.1.6 Not to permit any person other than the Company to bring into service at the site any additional equipment which is to be connected to the equipment covered by this agreement unless:
 - 4.1.6.1 The Company has given its prior approval in writing, or
 - 4.1.6.2 The Company has agreed to install the additional equipment but failed to do so within a period of 28 days after receipt of a written order from the Customer.
- 4.1.7 Not to repair, adjust or alter the equipment covered by this agreement, either temporarily or permanently, unless specifically authorised by the Company or qualified to do so by successful completion of a recognised training course relevant to the change in question.
- 4.1.8 To indemnify the Company against all liabilities, costs and claims of whatever nature where the Customer has allowed the equipment to be altered, adjusted or interfered with by persons other than the Company's authorised engineers or agents, or allow additional equipment to be fitted in contravention of paragraph 4.1.6 above.
- 4.1.9 To pay the Company charges for any re-programming work, service visits or replacement equipment where the fault discovered is not due to fair wear and tear.
- 4.1.10 Not to assign the benefit of this agreement, or delegate its obligations without the previous written consent of the Company.
- 4.1.11 To indemnify the Company against all liabilities, costs and claims of whatever nature from third parties in the event that the Company is unable to keep the equipment in good working order due to causes within the control of the Customer.
- 4.1.12 Where supplementary charges are incurred for goods or services supplied outside the scope of this agreement, the Customer shall, without prejudice to the Company's accrued rights, pay for those goods or services by the end of the month following the month in which any invoice for them is dated.
- 4.1.13 To provide the Company with a means of accessing the equipment remotely, via a dial-up, vpn or internet connection

5 VAT, INTEREST AND LATE PAYMENT CHARGES

- 5.1 The annual charge and any other amounts payable under the terms of this agreement are exclusive of Value Added Tax or any other similar taxes levied or duties which will be added to or charged on invoices at the appropriate rate.
- 5.2 Time for payment of invoices is of the essence and if payment is not received within the agreed payment terms, the Company may require the Customer to pay interest at 5% per full or partial 30 day period following the due date of the invoice. If payment is not received by the due date, Spire Business Communications Limited reserve the right to charge the sum of £85 plus VAT by way of liquidated damages and as a contribution towards the additional administrative costs incurred by Spire Business Communications Limited in taking steps to secure payment.

6 ADJUSTMENT AND VARIATION OF SUPPORT CHARGES

- 6.1 The annual charge may be adjusted at any time in the event that:
- 6.1.1 The support service provided for the equipment is changed for any reason. The annual charge may then be adjusted to the appropriate rate for the revised service in accordance with the Company's support charges in force at the relevant time.
- 6.1.2 Any change is made to the requirements of the network operator affecting the provision of the support service. In that event the annual charge shall be adjusted by such amount as is reasonable in the opinion of the Company.
- 6.1.3 The Customer requests that additional equipment be made the subject of this agreement and the Company agrees to maintain that equipment.
- 6.1.4 The Company gives at least 30 days prior written notice to the Customer of an increase in the annual charge. Such adjustments shall not be made at intervals more frequently than once in any twelve-month period.

7 THE COMPANY'S OBLIGATIONS

- 7.1 Subject to the conditions set out below and subject to the payment of the annual charge by the Customer, the Company shall during the term of this agreement carry out in the manner set out in Appendix II such repair and replacement work resulting from fair wear and tear and/or faulty workmanship or faulty materials as is necessary to maintain the equipment listed in Appendix I in efficient working order.
- 7.2 The obligations of the Company will be subject to the following conditions:
- 7.2.1 The Company shall be under no liability in respect of:
- 7.2.1.1 Making good defects in electricity supply, non- Spire Business Communications Limited network service and connections, and/or host systems.
- 7.2.1.2 Any failure or defective working of the equipment due to any fault, failure or change in the electricity supply, non- Spire Business Communications Limited service and connections, and/or host systems.
- 7.2.1.3 Any failure or defective working of the equipment caused directly or indirectly by any meteorological conditions including electrical storms.

The Customer shall have duly notified the Company of such fault or necessary repair in accordance with paragraph 4.1.4 of this agreement.

- 7.3 At the request and expense of the Customer, and subject to the absolute discretion and time-scales of the Company, additional work, repair, replacement or support that is not covered under the Company's obligations at paragraph 7.1 may be agreed to.

8 PERFORMANCE

- 8.1 Subject to the provisions of this agreement, the Company warrants that it will exercise reasonable care and skill in the performance of its obligations under this agreement.

- 8.2 Except as provided for in paragraph 7 and of this agreement:

8.2.1 All conditions and warranties, express or implied, as to the quality of the service to be provided by the Company or the quality or fitness for purpose of any materials used by the Company are hereby expressly excluded, and

8.2.2 The Company shall be under no liability for any loss or damage, whether direct, indirect or consequential, howsoever arising which may be suffered by the Customer.

- 8.3 The Customer acknowledges that the annual charge and other charges payable are calculated on the basis that the above Conditions will apply and that it has been put on notice by the Company that it should insure itself against losses in respect of which the Company's liability is excluded under this agreement.

- 8.4 The foregoing provision of this condition shall not apply to services provided to persons who deal as consumers (as that expression is so defined in Section 12 of the Unfair Contract Terms Act 1977) unless the contract is an international supply contract (as defined in Section 26 of that Act).

9 FORCE MAJEURE

The Company shall have the right to cancel or temporarily suspend the provision of the support service if it is prevented from or hindered in providing the service through any circumstances beyond its control including (but not limited to) industrial action, war, fire, pandemics or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever as a result.

10 DEFAULT AND TERMINATION

- 10.1 The Company shall have the right at any time, by giving notice in writing to the Customer, to terminate this agreement with immediate effect in any of the following circumstances:
- 10.1.1 If the Customer commits a breach of any of the terms and conditions of this Agreement and fails to remedy the same within 10 days of written notice requiring it to do so.
 - 10.1.2 If the Customer being a company enters into liquidation (whether compulsory or voluntary) or Administration or Administrative Receivership or, being an individual, is made the subject of a bankruptcy order or in either case compounds with its creditors or has as Receiver appointed of all or any part of its assets, or takes or suffers any similar action in consequence of debt or in either case suffers any analogous procedure under the law of any jurisdiction.

11 GOVERNING LAW

This agreement is governed by the laws of England and Wales (to which jurisdiction the Customer irrevocably submits), and the English courts shall have the exclusive jurisdiction to resolve any disputes arising out of it.
