

# TERMS AND CONDITIONS

## 1. DEFINITIONS

The "Company" means Clearlink Telecoms and Data Ltd and the assigns of Clearlink Telecoms and Data Ltd

The "Customer" means the person or person(s) to whom the Agreement is addressed overleaf. Where more than one person is "the Customer" each of those persons shall be jointly and severally liable for the obligations of the Customer hereunder.

The "Equipment" means the equipment specified overleaf and any replacement thereof and any addition thereto which may thereafter be made. 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.

## 2. MAINTENANCE AND REPAIR

- (a) The Customer shall notify the Company in writing as soon as possible of any fault in the Equipment or any work or repair or maintenance that may be necessary. The Customer may notify the Company verbally of any such faults, but the Company accepts no responsibility for non-performance of its maintenance obligations if verbal notification is not so confirmed in writing.
- (b) The Company shall, as soon as reasonably practicable, carry out any maintenance of all and repairs or replacements to the Equipment which may be requested by the Customer and which may be necessary as the result of fair wear and tear arising from the correct and proper operation of the Equipment. Such maintenance, repairs, and replacements may be carried out at the Premises or at the Company's workshops at the option of the Company. Any additional maintenance, repairs or replacements or service visits not covered by this Agreement (for example, trunk line faults or maintenance required as a result 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).
- (c) Subject to Sub-clause (d) below, the Company will provide without additional charge labour and any materials used in carrying out any maintenance, repairs or replacements to the Equipment arising from fair wear and tear as aforesaid.
- (d) Replacement of consumable or extendable 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.
- (e) 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.
- (f) The Company and its duly authorised representatives shall have access to the Premises at all reasonable times to perform its maintenance obligations hereunder 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.
- (g) For the avoidance of doubt, this Agreement does not cover any piece of equipment not included in the definitions of the Equipment, any services or performance that are beyond the scope of this Agreement or maintenance of the Equipment's environment (including the Customer's premises or surrounding installations). Where the Company agrees to extend the maintenance cover to such additional equipment, the Company shall be entitled to increase the maintenance charge due in accordance with Clause 7 below.
- (h) Maintenance does not cover faults arising due to any failure of the customer's data network however arising if connected to the equipment.
- (i) The Company will continue to maintain the customer's equipment after 7 years on a best endeavour's basis as parts are subject to availability

## 3. CUSTOMER RESPONSIBILITIES

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

- (a) The Customer will maintain the environmental conditions recommended by the manufacturer(s) of the Equipment and/or the Company from time to time.
- (b) In the event of a modem being provided by the Company to facilitate remote service, the modem shall remain the property of the Company and shall not be removed from site except by the Company.
- (c) The maintenance charge shall be paid in accordance with the provision set out on the coversheet hereto. Any other charges under the terms of this Agreement shall become due for payment within fourteen 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.
- (d) The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit the Premises.

## 4. INTERFERENCE

The Equipment shall not be moved, interfered or tampered with in any way by the Customer and the Customer at all times 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

- (a) 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 where 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 the purpose of this clause indirect or consequential loss or damage shall include any loss of profits or income or business of whatsoever kind.
- (b) Notwithstanding the above provisions of this 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 the sum of £500,000 in respect of any claim or series of claims arising from the same event, which sum is related 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 24 months, unless and until terminated by either party hereto giving at least three months notice in writing by Recorded Delivery post to the other, expiring at the end of the original 24 month period or on any subsequent anniversary thereof.

## 7. ADJUSTMENT OF MAINTENANCE CHARGE

- (a) The Customer shall pay to the Company in advance the maintenance charges specified overleaf or any subsequent variation thereof. The Company will adjust the maintenance charge with effect from the first and subsequent anniversaries of the date of this Agreement. The Company may increase the annual charge for maintenance within the terms of this agreement by a maximum of 5% per annum or by the rate of inflation whichever is the greater at the Company's discretion.
- (b) Notwithstanding Sub-clause (a) above, if the Company agrees to extend the definition of the Equipment covered by this Agreement to any additional Equipment, the Company shall be entitled to increase the maintenance charge accordingly and such increased maintenance charge shall be subject to the adjustment provisions in accordance with the provisions of Sub-clause (a) above. The increased maintenance charge shall take effect from the time the Company agrees to extend the definition of the Equipment to include such additional equipment. For the avoidance of doubt, the Company shall not be bound to extend the provisions of this Agreement to cover such additional equipment unless it agrees to do so in writing.

## 8. TERMINATION AND DEFAULT

- (a) The Company may, by giving written notice, terminate this Agreement in any of the following events:-
  - (i) 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;
  - (ii) 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
  - (iii) if 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)
- (b) 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;
- (c) In the event of a breach of this Agreement by the Customer, the failure by the Company to exercise its right of termination contained in Sub-clause (a) 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 (a) in any event.
- (d) Without prejudice to the Company's right to terminate this Agreement, the Company reserves the right to charge interest at 2% 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.
- (e) If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred in the Company's decision shall be final and binding on the Customer) the Company reserves the right to terminate this Agreement immediately, by giving written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Company shall repay the Customer a fair proportion of any charges for the Company's service which have been paid in advance by the Customer.
- (f) 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

- (a) This Agreement shall be conditional on acceptance by the Company. Such acceptance shall 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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

The Customer may assign this Agreement with the prior written consent of the Company which shall not be unreasonably withheld but which shall not be given unless (a) the Customer and the proposed assignee sign the Company's standard transfer agreement and (b) the Customer has paid all sums accrued due to the Company and the Company's then current fee in respect of transfer costs.

## 12. VERBAL ARRANGEMENTS

- (a) No terms, warranties or representations, other than those embodied in this Agreement shall be binding upon the Company and the Customer acknowledges that he has not accepted the conditions overleaf 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.
- (b) The Company may assign, transfer or sub-contract this Agreement at any time without the prior agreement of the Customer.

## 13. NOTICES

Any notices hereunder shall be in writing and shall be subsequently served either if delivered personally or if sent by recorded delivery post to the address given overleaf or at any subsequent address notified to the other party in writing. A notice may be served by fax provided that an appropriate confirmation of sending printout is received and the sender also sends a copy of the notice by recorded delivery post as set out above. A notice delivered (i) personally shall be deemed served at the time of delivery; (ii) by fax shall be deemed served at the time of sending; and/or (iii) by recorded delivery post shall be deemed served on the second working day after the date on which the notice is posted.

## 14. 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.