

# Southern Business Communications Ltd

## Telephone System Maintenance Terms and Conditions

### 1. Definitions

In this agreement, the following words shall have the following meanings:

'Agreement'	the agreement containing these Terms and Condition;
'Charges'	the amounts set out in the First Schedule, including the Annual Charge;
'Client'	the company registered in England and Wales as detailed in the Maintenance Schedule;
'Commencement Date'	Contract start date;
'Contractor'	Southern Business Communications Ltd, a company registered in England and Wales under company registration number 02529115 and whose registered office is at Unit 1 The Broadway, Andover, Hampshire, SP102JF;
'Maintenance Services'	To maintain the equipment set out in the Second Schedule in working order and to carry out, without further charge, all repairs and replacements to the equipment made necessary by wear and tear in normal use;
'Parties'	the Contractor and the Client, and 'Party' shall mean either one of them;
'Receiving Party'	the meaning given in clause 7;
'Supplying Party'	the meaning given in clause 7;
'Telephone Equipment'	the telephone equipment listed in the Second Schedule
'Working Party'	the hours between 9 am and 5 pm Monday to Friday excluding Bank Holidays.

### 2. Maintenance Services

- 2.1 The Contractor shall provide the Maintenance Services to the Client in consideration for the Client paying the Charges to the Contractor, subject to the provisions of this Agreement.
- 2.2 The Contractor shall use reasonable endeavours to provide the Maintenance Services.
- 2.3 The Maintenance Services shall be performed by the employees or agents that the Contractor may choose as most appropriate to carry out those Maintenance Services.
- 2.4 The Maintenance Services will be provided in accordance with the following fault categories;
- 2.4.1 Code A: A serious or total failure of the system preventing or seriously degrading incoming or outgoing calls. The Contractor will provide the Maintenance Services within 4 Working Hours of the fault being reported.
- 2.4.2 Code B: Faults to an extension or small number of extensions or a programming fault which results in loss of use of some features or extensions on the system. Incoming and outgoing calls are still possible at a reduced service level. The Contractor will provide the Maintenance Services within 16 Working Hours of the fault being reported.
- 2.4.3 Code C: An appointment made in advance for a non-urgent site visit or remote response to add, change or remove any feature or part of the system. Response priority will be given to Code A calls followed by Code B calls.
- 2.5 The Maintenance Services will be carried out either remotely via a modem link, over the telephone, or on site. Alternatively, replacement parts will be sent to the Client through the post.
- 2.6 The Contractor shall provide at cost all parts which the Contractor deems necessary to maintain the Telephone Equipment in good working order. All parts shall be provided on an exchange basis and shall be new equivalent standard parts of equal quality. All parts removed for replacement shall become the property of the Contractor. This Agreement does not cover the cost of any consumables, which shall be provided by the Client, or charged to the Client if provided by the Contractor.
- 2.7 This Agreement may be extended to cover additional Telephone Equipment not listed in the Second Schedule if the Parties agree in writing that the Client shall pay an additional Charge and the Contractor shall perform the Maintenance Services in respect of such additional Telephone Equipment.

### 3. Location

- 3.1 Subject to clause 3.2, the Contractor shall provide the Maintenance Services at the location(s) set out in the Second Schedule. This Agreement shall apply only to the specified Telephone Equipment at the specified location(s). The Client shall give the Contractor 2 weeks' notice if it wishes to move any Telephone Equipment from its specified location, and the Contractor may at its sole discretion extend this Agreement to cover the Telephone Equipment in its new location. The Contractor may refuse to continue to provide Maintenance Services in respect of any Telephone Equipment that has been moved more than 100 miles from the Contractor's address as set out in clause 1.
- 3.2 If the Contractor decides that the repair of any Telephone Equipment cannot be completed at the Client's premises, it shall move the Telephone Equipment to its own premises and return the Telephone Equipment to the Client's premises once the Telephone Equipment has been repaired, at no additional charge to the Client.

### 4. Charges and payment

- 4.1 The Client shall pay the Annual Charge to the Contractor annually in advance, the first payment to be made on the Commencement Date and subsequent payments to be made on each anniversary of that date.
- 4.2 The Contractor shall invoice other Charges to the Client. All other Charges shall be payable by the fifteenth day of the month following the Contractor's invoice.
- 4.3 The Contractor may increase the Charges set out in the First Schedule by giving 30 days' prior written notice to the Client, provided that:
- 4.3.1 no such increase may be made within the initial 12 months of this Agreement, and
- 4.3.2 the Customer may terminate this Agreement by giving 14 days' notice in writing following any such notice of increased charges from the Contractor.
- 4.4 All amounts stated are exclusive of VAT and any other applicable taxes, which will be charged in addition at the rate in force at the time the Client is required to make payment.
- 4.5 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in this Agreement then the Contractor shall be entitled to:
- 4.5.1 charge interest on the outstanding amount at the rate of 4% a year above the base lending rate of Lloyds TSB Bank plc, accruing daily;
- 4.5.2 require the Client to pay, in advance, for any Maintenance Services (or any part of the Maintenance Services) which have not yet been performed; and
- 4.5.3 not perform any further Maintenance Services (or any part of the Maintenance Services).
- 4.6 When making a payment the Client shall quote relevant reference numbers and the invoice number.

### 5. The Client's obligations

- 5.1 During performance of the Maintenance Services the Client shall:
- 5.1.1 co-operate with the Contractor as the Contractor reasonably requires;
- 5.1.2 provide the information and documentation that the Contractor reasonably requires;
- 5.1.3 make available to the Contractor such Facilities as the Contractor reasonably requires; and
- 5.1.4 ensure that the Client's staff and agents co-operate and assist the Contractor.
- 5.2 'Facilities' shall mean working space, heat, light, ventilation, electrical power, telephone, paper, ink, toner, computer equipment, access to the internet and the Client's computer network within a reasonable distance of the Telephone Equipment, and shall include not only access to such resources but also use of them to the extent that the Contractor needs to do so in order to perform the Maintenance Services.
- 5.3 The Client shall keep and make available to the Contractor any operating manuals containing programs or other data supplied with any of the Telephone Equipment.
- 5.4 The Client shall not charge for the Contractor's use of the Facilities made available by the Client.
- 5.5 If the Client does not provide the Facilities that the Contractor reasonably requires to perform the Maintenance Services, then any additional costs and expenses which are reasonably incurred by the Contractor shall be paid by the Client.
- 5.6 The Client shall maintain the Telephone Equipment in good physical condition free from moisture, dirt and dust.
- 5.7 The Client is responsible for backing up stored data at a suitable frequency on data storage devices such as Call Loggers and Voicemail systems. The Client is to safely store such back-up material in order that the system can be restored in the event of data loss. Failure of the Client to back-up and store data may result in a loss of use to the system and an additional charge (to be advised on the occurrence of the data loss) will be incurred by the Client regarding the complete recommissioning of the system.
- 5.8 The Client is responsible for ensuring that, in the instance of Telephone Equipment which is subject to a password, the password is changed regularly to limit the risk of the system being compromised by a third party. The Client acknowledges that the Contractor will not be responsible for any losses arising as a result of such passwords not being changed regularly.
- 5.9 The Client is to be responsible for implementing insurance in respect of all risks relating to the maintenance of the Telephone Equipment not covered by clause 9 of this Agreement.
- ### 6. Exclusions
- 6.1 This Agreement does not cover the wiring and connections between the network connections point, nor any extension sockets or underground/overhead routes. Should repairs to the site wiring or connection ports be necessary, or replacement extension sockets be required, the Client will pay the Contractor's Charges for labour and materials as set out in the First Schedule hereto.
- 6.2 This Agreement does not cover faults which, upon inspection, are found not to relate to the Telephone Equipment in the Second Schedule. If the Client requires the repairs to be carried out, it shall pay the Contractor's Charges for labour and materials as set out in the First Schedule hereto.
- 6.3 This Agreement does not cover batteries supplied with the Telephone Equipment, to include DECT handsets.
- 6.4 This Agreement does not cover any defect or error in software used with the Telephone Equipment.
- 6.5 This Agreement does not cover damage to the Telephone Equipment caused by the transportation or relocation of the Telephone Equipment.
- 6.6 This Agreement does not cover damage to the Telephone Equipment caused by the negligence of the Client, its employees, its subcontractors or any other person. If the Telephone Equipment is damaged by such negligence, the Contractor shall repair the Telephone Equipment, but the Client shall pay for all parts required and the labour expended in the repair at the rates set out in the First Schedule.
- 6.7 This Agreement does not cover the maintenance of altered or additional Telephone Equipment altered or installed by a third party. If such Telephone Equipment requires maintenance or repair, the Client shall pay for all parts required and the labour expended by the Contractor at the rates set out in the First Schedule. In any event, the Client must notify the Contractor of any alterations or additions to the Telephone Equipment made during the term of this Agreement and confirm that such alterations or additions were carried out in accordance with Section BS 6701 of the Code of Practice for the installation of apparatus intended for connection to certain telecommunication systems.
- 6.8 In the case of any Telephone Equipment that is more than 5 year(s) old, the Contractor shall attempt to repair it and obtain any parts that are needed, but shall not be liable if it cannot complete the repair because it is unable to obtain any necessary parts.
- 6.9 The Contractor shall not be liable if it is unable to complete any repair, or if any equipment is damaged, because of any cause outside its control, to include but not limited to: deficiencies in the supply of power (including power failures and surges), fire, flooding and any other environmental hazards, failure of the Network service and/or connections; failure of the PABX systems.
- 6.10 The Contractor takes no responsibility for any data belonging to the Client that may be held in any Telephone Equipment.
- 6.11 The Contractor reserves the right not to provide the Maintenance Services for any of the following reasons:
- 6.11.1 any Telephone Equipment is not being used in accordance with its manufacturer's published instructions; or
- 6.11.2 the Telephone Equipment has been abused or mistreated, including being subjected to unusual physical or electrical stress; or
- 6.11.3 the Client alters the Telephone Equipment or uses parts or supplies not supplied by the Contractor or the Telephone Equipment's manufacturer; or
- 6.11.4 any repairs to the Telephone Equipment are performed by persons other than the Contractor and its authorised representatives; or
- 6.11.5 the Client has not carried out procedures or services as recommended by the Contractor, to the Telephone Equipment.
- 6.12 The Contractor does not accept liability for any losses caused by the unauthorised use of the Telephone Equipment. We recommend that you install appropriate safeguards to prevent such access and will, upon request, be pleased to provide a separate quotation for a security audit of the Telephone Equipment.



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# Southern Business Communications Ltd

## Telephone System Maintenance Terms and Conditions continued from the Maintenance Schedule.

### 7. Confidentially

7.1 Each Party ('Receiving Party') shall keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the confidential information of the Supplying Party for the purpose of performing the Receiving Party's obligations under this Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 7.1, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

7.2 The obligations of clause 7.1 shall not apply to any information which:

7.2.1 was known or was in the possession of the Receiving Party before it was provided to the Receiving Party by the Providing Party;

7.2.2 is, or becomes, publicly available through no fault of the Receiving Party;

7.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

7.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or

7.2.5 is required to be disclosed by order of a court of competent jurisdiction.

7.3 This clause 7 shall survive termination of this Agreement for a period of 1 year.

### 8. Use of sub-contractors

8.1 The Contractor is permitted to use other persons to provide some or all of the Maintenance Services.

8.2 The Contractor shall be responsible for the work of a sub-contractor to the same standard as stated in this Agreement or as agreed by the Parties.

### 9. Warranties, liability and indemnities

9.1 The Contractor warrants that it will use reasonable care and skill in performing the Maintenance Services to the standard generally accepted within the industry. However, the Contractor provides no warranty that any Telephone Equipment shall be restored to good working order by any particular time.

9.2 If the Contractor performs the Maintenance Services (or any part of the Maintenance Services) negligently or materially in breach of this Agreement, then, if requested by the Client, the Contractor will re-perform the relevant part of the Maintenance Services, subject to clauses 9.3 and 9.4 below. The Client's request must be made within 7 days of the date of performance of the Maintenance Services in question.

9.3 Except in the case of death or personal injury caused by the Contractor's negligence, the liability of the Contractor under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Charges paid by the Client to the Contractor under this Agreement. The provisions of this clause 9.3 shall not apply to clause 9.5.

9.4 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business, or goodwill or extra expenses caused by the unauthorised use of your telephone system. The provisions of this clause 9.4 shall not apply to clause 9.5.

9.5 The Client shall indemnify and hold harmless the Contractor from and against all Claims and Losses arising from loss, damage, liability, injury to the Contractor, its employees and third parties, by reason of or arising out of any information supplied to the Client by the Contractor, its employees or subcontractors, or supplied to the Contractor by the Client within or without the scope of this Agreement. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.6 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

### 10. Termination

10.1 This Agreement shall begin on the Commencement Date and shall last for 1 year and thereafter from year to year unless terminated by either party giving not less than 30 days written notice to the other expiring on or before an anniversary of this agreement.

10.2 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on written notice to the other Party ('Other Party'):

10.2.1 if the Other Party is in material breach of its obligations under this Agreement and, if the breach is capable of remedy within 30 days, the breach is not remedied with 30 days of the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or

10.2.2 if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt. The notice shall take effect as specified in the notice.

10.3 On termination of this Agreement, the Client shall pay for all Maintenance Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Contractor for the performance of the Maintenance Services prior to the date of termination.

### 11. General

#### 11.1 Force majeure

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

#### 11.2 Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

#### 11.3 Assignment

Subject to the following sentence, neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party. The Contractor may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement. The Client cannot assign or transfer any or all of its rights or obligations under this Agreement to any person to which it transfers all of its business without the prior written agreement of the Contractor. If Agreement is obtained, the Client must ensure that the assignee undertakes in writing to the Contractor to be bound by the obligations of the assignor under this Agreement.

### 11.4 Entire agreement

This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

### 11.5 Waiver

No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

### 11.6 Agency, partnership etc

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### 11.7 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### 11.8 Announcements

No Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

### 11.9 Interpretation

In this Agreement unless the context otherwise requires:

11.9.1 words importing any gender include every gender;

11.9.2 words importing the singular number include the plural number and vice versa;

11.9.3 words importing persons include firms, companies and corporations and vice versa;

11.9.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement

11.9.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

11.9.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

11.9.7 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;

11.9.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and

11.9.9 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.

### 11.10 Notices

Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail to the address of the relevant Party set out in clause 1.

### 11.11 Law and jurisdiction

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

### 11.12 Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.



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