

HARDWARE MAINTENANCE AGREEMENT

Parties:

- (1) "The Company" shall mean Unify Business Solutions Ltd, registered number 4749638 whose registered office is at Dorial House, 2 Hazel Court, Off Midland Way, Barlborough, Chesterfield S43 4FD
- (2) "The Customer" shall mean the company detailed on the maintenance contract.

Recital:

The Company has agreed to provide to the Customer certain services in respect of the maintenance of the communications hardware equipment listed in the Appendix upon the terms & conditions of this agreement.

Operative provisions:

1. Definitions

- 1.1 In this agreement: 'Additional Charges' means the charges to be calculated by the Company on a time & materials basis at its then prevailing rates in respect of the provision of Excepted Services pursuant to clause 6.2 below
- 1.2 'Commencement Date' means the date set out in the Appendix upon which this agreement shall commence
- 1.3 'Equipment' means the items of communications hardware identified by feature & description in the Appendix
- 1.4 'Excepted Services' means those services referred to in clause 6 below which do not fall within Maintenance Services
- 1.5 'Initial Period' means the period of twelve months commencing on the Commencement Date
- 1.6 'Maintenance Charges' means the aggregate annual charge for the Maintenance Services calculated in accordance with clause 3.1 below & set out in the Appendix
- 1.7 'Maintenance Services' means the provision of Curative Maintenance as defined in clause 5 below.
- 1.8 'Place Of Use' means that part of the Customers premises at the Site where the Equipment is installed & operated
- 1.9 'Preventative Maintenance' means the routine inspection & testing (by attendance on Site or remotely) by the Company of each item of Equipment in accordance with the Company's recommendations therefore & the carrying out by the Company of such repairs replacement of parts cleaning lubrication or adjustment to each item of equipment as the Company shall judge necessary as a result of said inspection & testing.
- 1.10 'Site' means the Customers address specified in the Appendix

2. Duration of Agreement

- 2.1 This agreement shall commence on the Commencement Date & shall continue until terminated by either party in accordance with the provisions of clause 13 below.

3. Companies Undertaking

- 3.1 In consideration of the payment of the Customer from time to time of the Maintenance Charges in accordance with the provisions of clause 4 below the Company undertakes to provide the Maintenance Services in respect of the Equipment upon the terms & conditions of this agreement.

4. Maintenance Charges

- 4.1 The annual maintenance charge at the date hereof in respect of each item of Equipment shall be set out in the Appendix. The aggregate of such annual maintenance charges shall constitute the Maintenance Charges for the purposes of this agreement.
- 4.2 The Company shall not be entitled to vary the Maintenance Charges during the period of 12 months commencing on the Commencement Date. Thereafter the company shall be entitled to vary the Maintenance Charges not more than once in every successive period of twelve months upon giving not less than 30 days prior written notice if increase to the Customer.
- 4.3 Upon receipt of a notice of increase in Maintenance Charges in accordance with clause 4.2 above the Customer shall be entitled to terminate this agreement in accordance with clause 13.1.1 below
- 4.4 The Maintenance Charges shall include the travel accommodation & subsistence expenses of the Company's employees (including the cost of time spent travelling) incurred in the provision of the Maintenance Services.
- 4.5 The Maintenance charges shall not include:
 - 4.5.1 the cost of any Excepted Services; or
 - 4.5.2 value added tax which shall be payable by the Customer in the manner & at the rate from time to time prescribed by the law;
 - 4.5.3 Any other taxes or duties as may be payable in relation to the Maintenance Services or the Maintenance Charges.
- 4.6 The Maintenance Charges shall be payable by the Customer no later than thirty days after the receipt of a valid & correct invoice.
- 4.7 The Company reserves the right to charge the Customer interest in respect of the late payment of any maintenance charges or Additional Charges due under this agreement (as well after as before judgement) at the rate of four per cent per annum above the base rate from time to time of Barclays Bank Plc from the due date therefore until payment compounded monthly.

5. Maintenance Services

Maintenance Services shall comprise in respect of each item of equipment at the place of use:

- 5.1 upon receipt of a request from a Customer the inspection testing & diagnosing (by attendance on Site or remotely) by the Company of any fault reported in an item of Equipment; &
- 5.2 the carrying out by the Company of such repairs, replacement of parts, cleaning, lubrication, or adjustment as the Company shall judge necessary to remedy the said fault

6. Exempt Services

- 6.1 The Maintenance Services shall not include:

The correction of any fault due to:

- 6.1.1.1 the Customers failure to maintain a suitable environment for the Equipment at the Place of Use therefore including without limitation failure to maintain a constant power supply air conditioning or humidity control;
- 6.1.1.2 the Customers neglect or misuse or unauthorised upgrading of the Equipment in accordance with the suppliers instruction manuals or for the purposes for which it is designed;
- 6.1.1.3 the alteration modification or maintenance of the Equipment by any party other than the Company without the Company's prior consent;
- 6.1.1.4 the transportation or relocation of the Equipment save where the same has been performed by or under the direction of the Company;
- 6.1.1.5 the use of consumables not approved by the Equipment manufacturers;
- 6.1.1.6 any defect or error in any software used upon or in association with the Equipment;
- 6.1.1.7 any accident or disaster affecting the Equipment including without limitation, fire, flood, water, wind, lightning, transportation, vandalism or burglary; or
- 6.1.1.8 the customers failure inability or refusal to afford the Company's personnel proper access to the Equipment;
- 6.1.2 the painting or refurbishing of the Equipment;
- 6.1.3 the relocation or transportation of the Equipment;
- 6.1.4 electrical work external to the Equipment;
- 6.1.5 the provision of supplies for use in association with the Equipment;
- 6.1.6 any modification or alteration of an attachment to the Equipment or removal of the same
- 6.1.7 Preventative Maintenance
- 6.2 The Company shall upon request by the Customer provide all or any of the Expected Services referred to in clause 6.1 above but shall be entitled to charge for the same by levying Additional Charges in the manner described in clause 6.4 below.
- 6.3 Without prejudice to clause 6.2 above the Company shall be entitled to levy Additional Charges in the manner described in clause 6.4 below if Maintenance Services are provided in circumstances where any reasonably skilled & competent data communications engineer would have judged the Customers requests to have been unnecessary.
- 6.4 Additional charges shall be levied by the Company monthly in arrears & shall be payable by the Customer (together with the Value Added Tax thereon) no later than 30 days after the receipt of invoice.

7. Customers Obligations

- 7.1 The Customer undertakes to the Company throughout the term of this agreement:
 - 7.1.1 to grant the Company such access to the Place Of Use as the Company shall from time to time reasonably require in order to discharge its obligations hereunder;

- 7.1.2 to make available at the Place Of Use such facilities as the Company shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space storage & office furniture & equipment;
- 7.1.3 to take all reasonable precautions to protect the health & safety of the Company's agents & sub contractors while on the Customer's Site; and
- 7.1.4 to make available the Equipment & supply all documentation & other information necessary for the Company to diagnose any fault in the Equipment.

8. Company's Warranty

- 8.1 The Company warrants & undertakes to the Customer:
 - 8.1.1 to perform the Maintenance Services & any Excepted Services with reasonable care & skill
 - 8.1.2 to perform any Expected Services within a reasonable time of being requested by the Customer;
 - 8.1.3 that it shall have a free & unencumbered title to any replacement parts for the Equipment supplied hereunder; and
 - 8.1.4 that the Customer will enjoy quiet possession of any such replacement parts & that the same will be of merchantable quality & fit for their purpose.
- 8.2 The Company does not warrant that the Maintenance Services (or the Additional Services) will cause the Equipment to operate without interruption or error.
- 8.3 Subject to the foregoing all conditions warranties terms & undertakings express or implied statutory or otherwise in respect of the performance by the Company of the Maintenance Services or Excepted Services hereunder are hereby excluded.

9. Limitation of Liability

THE CUSTOMERS ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.

- 9.1 Nothing herein shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting wholly from the negligence of the Company or its' employees agents or sub-contractors.
- 9.2 The Company shall not be liable for the Customer for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised that the possibility of the Customer incurring the same.
- 9.3 Subject to the provisions of clause 9.1 above the Company's entire liability in respect of any act or omission shall be limited to damages of £50,000 throughout the duration of this agreement regardless as to the number of such acts or omissions
- 9.4 The Customer hereby agrees to afford the Company not less than thirty days in which to remedy such act or omission.
- 9.5 The customer hereby agrees to indemnify the Company against all claims made against the Company by any of the Customer's employees customers or any other person for whom liability would have been excluded by this clause or in respect of any sum in excess of the limits stated by this clause if the claim had been against the Company by the customer.

10. Customers Warranty

- 10.1 The Customer warrants & undertakes to the Company that it is the owner of the Equipment & that it has full power & authority to enter into this agreement & permit the Company to perform the Maintenance Services & any Additional Services.
- 10.2 The Customer undertakes to indemnify & hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of clause 10.1 above.

11. Replacement of Parts

- 11.1 Subject always to the warranty set out in clause 8.1.4 above the company reserves the right to supply new second hand or reconditioned replacement parts in the performance of its duties hereunder.
- 11.2 Any parts of the Equipment replaced by the Company pursuant to clause 11.1 above ('Replaced Parts') shall upon replacement become the property of the Company & the Customer warrants that either it shall have a free & unencumbered title to such Replaced Parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consents & authorities to part with possession & give good title to the Replaced Parts.

12. Customers Representatives

- 12.1 The Customer shall communicate to the Company upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point & channel of communication for the provision by the Company of the Maintenance Services during the currency of this agreement. The Customer shall forthwith inform the Company of any changes in the identity of any such person(s) or department.

13. Termination

- 13.1 This agreement may be terminated:
 - 13.1.1 by the customer upon giving not less than thirty days notice to the Company providing such notice is given no later than thirty days after receipt of a notice of increase in maintenance charges under clause 4.3;
 - 13.1.2 by the Customer upon giving not less than thirty days notice in writing to the Company, such notice terminating on the first or any subsequent anniversary of the Commencement date;
 - 13.1.3 forthwith by the Company if the Customer fails to pay the Maintenance Charges or any additional Charges due hereunder within thirty days of the due date therefore;
 - 13.1.4 forthwith by either party if the other commits any material breach of any term of this agreement (other than one falling within 13.1.3 above) & which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request by the other party to remedy the same;
 - 13.1.5 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (other than of the purpose of an amalgamation or reconstruction).
- 13.2 Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law & shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

14. Force Majeure

- 14.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies & raw materials or regulations of any civil or military authority (an 'Event of Force Majeure')
- 14.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 14.3 If a default due to an Event of Force Majeure shall continue for more than thirty days then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

15. Waiver

- 15.1 The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Invalidity & Severability

- 16.1 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement & all provisions not affected by such invalidity or unenforceability shall remain in full force & effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal & commercial objectives of the invalid or unenforceable provision.

17. Entire Agreement

- 17.1 The Company shall not be liable to the Customer for loss or damage arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this agreement other than those representations agreements statements & undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this agreement.

18. Assignment

- 18.1 Neither party shall be entitled to assign this agreement nor all or any of their rights & obligations hereunder without the prior written consent of the other save that nothing herein shall prevent the Company from using its employees or sub agents or sub contractors to carry out all or any of its obligations under this Agreement.

19. Law

- 19.1 This agreement shall be governed by & construed in accordance with English Law & the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts