

# **2020 Networks**

## **GENERAL CONDITIONS OF MAINTENANCE**

### **1. GENERAL**

1.1 Unless expressly otherwise stated, 2020 (“the Company’s”) Proposal may be subject to alteration or withdrawal by written notice to the Purchaser until any Contract arising from it (“the Contract”) has been duly accepted, in writing, by the Purchaser and the Company.

1.2 The Contract shall be governed by these (UK) General Conditions of Maintenance (collectively called “Conditions”) which shall apply to the exclusion of all other conditions, representations or undertakings. No variation of these Conditions shall apply unless agreed to, in writing, by the Company and the Purchaser.

1.3 The Company shall provide services including but not limited to maintenance, replacement and support (hereinafter referred to as ‘Services’) in respect of hardware and software (hereinafter referred to as ‘the Equipment’) in accordance with these Conditions.

### **2. SCOPE OF AGREEMENT**

2.1 The Company shall provide Services in accordance with the service levels as described within the Annexes attached hereto (hereinafter referred to as ‘Service Options’) from an agreed date (hereinafter referred to as ‘Effective Date’). The Effective date shall be the date on which the Equipment being installed is ready for use of the date on which existing Equipment is found to meet the Company’s requirements.

2.2 The Purchaser shall receive Services at one or more of its UK sites (hereinafter referred to as ‘Sites’) by entering into a schedule which shall be governed by, and subject to, these Conditions (hereinafter referred to as a ‘Schedule’). The Schedule shall detail the Service Options specified for the Equipment and on which site it is located, the Effective Dates, Basic Annual Charges and any Ad-hoc Services, Additional Hours and/or Upgrade to Service Options required.

### **3. OWNERSHIP AND CONDITION**

3.1 The Purchaser hereby warrants that he is the owner or licensee of the Equipment (or is entitled to enter into a Contract) and that the Equipment is in good working order as at the Effective Dates.

3.2 The Company reserves the right to carry out an examination of any Product to determine the acceptability or otherwise (notwithstanding that the equivalent Services have been provided by the Company up to the Effective Date under a separate agreement) for the provision of Services by the Company hereunder and to reject any such item which the Company decides is not so acceptable unless the Purchaser agrees that the Company can carry out at the Purchaser’s expense such rectification, updating or works as the Company considers necessary to bring the Equipment up to an acceptable standard. These Conditions will not be enforceable until such time as the equipment has been deemed acceptable by the Company and any services provided cannot be linked to any previous instance prior to the start of the contract.

### **4. DURATION OF SCHEDULES**

4.1 The minimum period of Service for each Product shall be twelve (12) months from the Effective Date (hereinafter referred to as the ‘Fixed Period’. Thereafter Service shall continue to be provided under the Schedule unless and until terminated by either Party by giving the other not less than ninety (90) days prior written notice to expire on any anniversary of the Effective Date.

4.2 For Services provided for Software which is supplied under a Company Software Licence Agreement and any associated Hardware which can not function without said Software the Purchaser shall provide ninety (90) days prior written notice to expire at any time in accordance with the termination provision of the Software Licence Agreement. No other relaxation to the termination provisions will be allowed by the Company.

### **5. TRANSFER OF TITLE AND RISK**

Any equipment or part thereof replaced by the Company shall become the property of the Company and the replacement Equipment or part thereof shall become the property of the Purchaser. Risk in the despatched Equipment or part thereof shall remain the responsibility of the despatching Party until delivered to the receiving Party at which time risk will pass to the Receiving Party.

## **6. GENERAL TERMS AND CONDITIONS**

6.1 The attached Service Option contains details of the terms and conditions specific to their level of Service.

The following terms and conditions are common to all Service Options:

- (i) 2020's Normal Working Hours are 0900 to 1700 hours Mondays to Fridays inclusive and exclude National and Bank Holidays. All Service Options attached hereto are based on providing Services within 2020's Normal Working Hours unless otherwise specified.
- (ii) Scheduled preventative Services based on the Products specific needs as determined by the Company shall be provided as an Ad-hoc Service, (except with regard to certain Networking Products where it will be classed as an Upgrade of Service Option). Scheduled or routine preventative Services requested by the Purchaser shall be provided as an Ad-hoc Service at times agreed in advance with the purchaser.
- (iii) Unjustified Service requested by the Purchaser without adequate reason shall be charged to the Purchaser (if so required by the Company) as an Ad-hoc Service;
- (iv) The Purchaser shall take good care of the Equipment and operate the same in a proper manner and in accordance with instructions and other documentation issued periodically by the Company or the Manufacturer;
- (v) The Purchaser shall not make or endeavour to make any alterations, additions, repairs or servicing to the Equipment or any part thereof or permit any other person to do so without prior consent of the Company; and
- (vi) The Purchaser shall obtain and maintain in full force and effect any British Telecom or other consent licences or authorisations necessary for the operation or use of the Equipment and absence or withdrawal thereof shall not entitle the Purchaser to withhold or delay payment of any sum due to the Company hereunder.

6.2 Work other than to the Equipment, complete overhauls, painting or refinishing, making specification or other changes or modifications, removal or relocation and repair or replacement caused by an accident or misuse, or neglect are not included within the Service Options.

6.3 The Purchaser shall nominate a knowledgeable representative as a contact with regard to communication in order to facilitate fixes in an expeditious manner either remotely or on Site.

6.4 The Company requires that the Purchaser performs reasonable minimal system checks as appropriate before requesting support from the Company.

## **7. CHARGES**

7.1 Charges in respect of the Services provided for each Product for each Site, adjusted to take into account any Additional Hours, shall be in the form of Basic Annual Charges.

7.2 The Ad-hoc Service charges shall comprise the Company's current labour rates and shall include the engineer's travel time (hereinafter referred to as 'Ad-hoc Charges'). The minimum charge for one visit including travel time is two (2) hours.

7.3 For the Fixed Period the Basic Annual Charge shall be fixed but thereafter it may be varied by the Company once in any twelve (12) month period by giving to the Purchaser not less than ninety (90) days prior written notice of a variation.

7.4 The Charges exclude all Value Added Tax (VAT).

## **8. PAYMENT**

8.1 The Basic Annual Charges shall be payable annually in advance on the Effective Dates and the Ad-hoc Charges shall be payable within fourteen (14) days of the date of the invoice.

8.2 If any Charge or any part thereof remains unpaid for more than fourteen (14) days after its due date the Company shall be entitled to withhold any or all of the Services provided hereunder until it receives the payment.

8.3 The Company may charge the Purchaser with interest at a rate equal to two percent (2%) above the HSBC Bank plc base lending rate for the time being on all amounts overdue hereunder, such interest to be calculated on a daily basis.

## **9. SERVICES**

The Purchaser shall enter into one or more Service Options in order to obtain the Services it requires for the various Equipment at various Sites. The Purchaser may request a variation to the original requirement, either Ad-hoc Services, Additional Hours, or an Upgrade of Service Option. The Purchaser shall undertake the following procedures in order to facilitate such additions or amendments.

(i) **Ad-hoc Services**

The Purchaser shall submit a request in writing to the address detailed above. The Ad-hoc Services cover occasional Service only and not an upgrade to the Service Option.

(ii) **Additional Hours**

The Purchaser may request Additional Hours which are outside the Company's Normal Working Hours. On request the Company shall complete a supplementary Schedule detailing the Additional Hours requested and the associated charges.

(iii) **Upgrade of Service Options**

On request the Company shall prepare a Schedule detailing the change to supersede the Equipment or part thereof to be Upgraded leaving in existence the original Schedule with its remaining Equipment or part thereof.

## **10. ENTIRE AGREEMENT**

10.1 These Conditions, together with an Annex and Schedule referring to it, are the complete and exclusive statement of the agreement between the Parties and supersedes all other agreements, statements, representations or warranties made by or between the Parties or either of them relative to the subject matter hereof. These conditions shall supersede any terms and conditions appearing on or referred to in any Purchase Order, acknowledgement or other document issued by the Purchaser in respect of the subject matter of this Agreement.

10.2 Save as provided otherwise in these Conditions, no waiver, alteration, variation or addition to the Agreement shall be effective unless agreed by both parties and accepted by an authorised signatory of both parties.

## **11. LIABILITY**

11.1 If the Company, its agents or subcontractors are on site the company shall indemnify the Purchaser for the execution of the Services by the Company, its agents or subcontractors against:-

- (i) personal injury or death of any person; and
- (ii) any damage to or loss of property, real or personal; in so far only as such personal injury, death, damage or loss is due to a negligent act of the Company, its agents or subcontractors.

11.2 This indemnity is conditional on the Purchaser:-

- (i) giving to the Company prompt written notice of any claim; and
- (ii) permitting the Company (at the Company's expense) to conduct on the Purchaser's behalf any litigation or negotiations or settlement in respect thereof; and
- (iii) undertaking to do nothing which may prejudice the Company's interests hereunder; and
- (iv) complying with the Company's reasonable requirements for assistance of support in such claim.

11.3 The Purchaser shall indemnify the Company, its agents or subcontractors while they are on the Purchaser's site against:-

- (i) personal injury or death of any person; and
- (ii) any damage to or loss of property, real or personal; in so far only as such personal injury, death, damage or loss is due to a negligent act of the Purchaser, its agents or subcontractors.

11.4 The parties' liability hereunder (save in the case of death or personal injury) in respect of any one occurrence, or series of occurrences originating from one source shall not exceed £1,000,000 or the Contract Price which ever is the lesser.

11.5 Neither party shall in any case be liable under this Contract for any consequential or indirect loss or damage howsoever arising.

11.6 Save as set forth in this clause, neither party shall be liable to the other for any loss, damage, death or injury of any kind howsoever arising.

11.7 The foregoing states the Company's entire liability for Services executed by the Company, its agents or subcontractors for the purchase or proper use of the Equipment by the Purchaser.

## **12. SOFTWARE**

The Company retains to itself or third parties as the case may be, full ownership of and copyright in all software developed or provided under the Contract. The Purchaser shall not use the software for any purpose other than that for which it is supplied under this Contract nor shall such software be copied, modified or disclosed by the Purchaser, its agents, employees or subcontractors to any third party except as otherwise agreed, in writing, by the Company.

## **13. FORCE MAJEURE**

13.1 The Company shall not be liable for any delay in performance hereunder due to any reason whatsoever beyond the control of the Company including but not limited to war, invasion, hostilities, embargoes, act of government or equivalent authority, civil war, rebellion, civil strife, failures by subcontractors due to their cessation or suspension of trade due to insolvency receivership or winding-up order or force majeure as herein stated, strikes and/or industrial disputes. Performance of the Contract or those parts so affected shall be deemed suspended during such delay and the time for completion shall be extended for a period corresponding to the effects of such delay.

13.2 The Company shall discuss with the Purchaser ways of completing performance of the Contract and if the contract becomes impossible to perform due to any events of force majeure which persist for a continuous period of 6 (six) months, either party may terminate the Contract and in this event the parties shall enter into good faith negotiations to agree the sum due to the Company from the Purchaser for such portion of the Contract Price as is proportionate to the work done by the Company in or towards performance of the contract up to the date of such cancellation.

## **14.0 TERMINATION FOR DEFAULT**

14.1 This Contract may be terminated as prescribed in Clauses 13 and 15 hereto.

14.2 This Contract may also be terminated by either party without prejudice to any rights or remedies which shall have accrued up to the date of such termination, in the event of a material breach of a condition by either party which is capable of remedy that has not been remedied by that party within sixty (60) days or any other such period as may be agreed between the parties of written notice requiring such remedy, or if the breach is incapable of remedy, termination will be effective immediately upon written notice setting out the nature of the breach.

## **15. BANKRUPTCY**

If either party shall become bankrupt or insolvent or compounds with his creditors or being a limited company commences to be wound up (save for the purpose of reorganisation) or suffers a receiver to be appointed, the other party shall be at liberty to terminate the Contract forthwith by notice, in writing, without prejudice to any rights or remedies which shall have accrued up to the date of such termination.

## **16. MISCELLANEOUS**

16.1 The parties shall not construe the failure of the other party in one or more instances to insist upon strict performance of any of the Conditions as a waiver or relinquishment, to any extent, of the right to assert or rely on any such Condition on any future occasion.

16.2 Any Conditions of the Contract held invalid under any applicable statement or rules of law shall be omitted from the Contract to the extent of such invalidity, but the remainder of the Conditions shall continue in full force and effect.

16.3 Any notice under the Contract shall be in writing and sent by first class registered or recorded delivery post to the relevant address stated in the Special Conditions and deemed duly served forty-eight hours after the time of posting. Either party may give written notice to the other of a change of address for the purposes of this condition.

16.4 The Company shall not be liable for any consequential loss or costs caused by a third party, in relation to interference or manipulation of any equipment or programming, carried out or attempted either on site or remotely. Should any fraud, phone hacking, impersonation or any other illegal act be implied, then the Company will make reasonable endeavours to assist in resolving any known issues, as soon as is reasonably possible.

#### **17. ARBITRATION**

Any dispute or difference arising between the Parties in relation to the Contract, not resolved by the Parties, shall be settled under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The venue for arbitration shall be London, England. The Parties shall continue to perform those obligations under the Contract not directly affected by such arbitration.

#### **18. ASSIGNMENT**

Neither Party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other (which consent will not be unreasonably withheld or delayed).

#### **19. CONFIDENTIALITY**

Any confidential, technical or commercial information supplied by either party must not be disclosed to any third party without the disclosing party's prior written consent, and shall not be copied or used except as authorised. The information contained in all documents furnished shall remain the disclosing party's property and shall be returned to the disclosing party at their request, and in any case on the termination of this Contract.

#### **20. LAW**

This Contract shall be governed by and construed in accordance with the laws of England and shall submit to the jurisdiction of the English Courts.