

1. Basis of This Contract
- 1.1 These terms "The Company" means United Network Solutions Ltd, of Tele House Borehamwood Enterprise Park Borehamwood, Hertfordshire WB6 4RJ and "the Customer" means the person as such on the contract set out overleaf and "Services" shall mean the maintenance and other services provided by the Company to the Customer.
- 1.2 A contract under which the Company shall supply Services to the Customer shall only come into existence once the Company has received and accepted the Customer's order which, if a quotation has been issued, must be within any time specified in the quotation and until acceptance of the order the Company shall be under no obligation to the Customer.
- 1.3 The Contract comprised by these terms and conditions and the contract set out overleaf to which these terms are annexed shall comprise the entire contract between the Company and the Customer ("This Contract").
- 1.4 Any other terms, conditions or provisions of any order or contract between the Company and the Customer shall be of no effect and the supply of Services by the Company shall not constitute acceptance of such other terms conditions or provisions.
- 1.5 Unless specifically agreed in writing and signed by a duly authorised officer of the Company, information and advice given orally or contained in the Company's publicity material, advertisements and catalogue and in correspondence between the Company and the Customer before the date of this contract is given gratuitously and without responsibility on the part of the Company and shall not form part of this Contract.
- 1.6 Unless stated in this Contract or expressly agreed in writing and signed by a duly authorised officer of the Company, no term, condition or warranty or representation (whether express or implied by statute, law, custom or usage) as to the nature, quality, or means of performance or fitness of the Services or their correspondence with any description given by the Company, or shall form any part of any contract between the Company and the Customer.
- 1.7 The terms of this Contract shall override and supersede any previous negotiations, agreement or arrangement between the Company and the Customer in relation to the supply of the Services.
- 1.8 Unless the Company otherwise agrees in writing the terms of this Contract, (other than the Basic Charge as hereinafter defined which may be varied with the written agreement of the Company) shall apply to all future agreements for the supply of services from the Company to the Customer.
- 1.9 Save as referred to in clause 1.5, no officer, employee, agent, representative or consultant of the Company is authorised to make any representation on behalf of the Company in respect of any matter to which this Contract relates, and no such representation shall form part of this Contract or impose any obligation upon the Company in respect of negligence or otherwise.
- 1.10 Only a duly authorised officer of the Company is authorised to make representations on behalf of the Company in respect of matters to which this Contract relates, and such representations must be written to bind the Company. Any other representation made by or on behalf of the Company prior to the date of this Contract is withdrawn.
- 1.11 The Customer warrants it has not been induced to enter into this Contract by any representation other than one made by a duly authorised officer of the Company in writing.
- 1.12 A variation to this Contract shall only be binding on the Company if it is in writing signed by a duly authorised officer of the Company.
2. Commencement and Contract Period
- 2.1 The Company shall commence performance of the Services on the date (if any) specified overleaf or the date on which the telecommunications equipment comprising the product(s) specified in this Contract ("the Installation") is brought into service or the date on which the pre connection inspection ("PCI") or inspection under clause 5 is completed by a duly authorised person or authority whichever is earliest to occur ("the Commencement Date").
- 2.2 The Contract may be terminated by either "the Company" or "the Customer" as long as the cancelling party gives the other not less than 90 day's notice in writing (including week-ends and bank holidays) prior to the anniversary of the initial fixed period specified overleaf ("the Initial Fixed Period"). If notice is not received within this period the contract will be deemed to have automatically renewed for another period equal to the initial fixed period specified overleaf ("the Initial Fixed Period").
3. Maintenance Services
- 3.1 Subject to the terms and conditions hereinafter appearing the Company shall from the Commencement Date use its reasonable endeavours to correct a fault in the installation by repairing or, at its option, replacing all or part of the installation (the "Fault Repair Service"). If the Company considers that it is necessary to replace all or part of the installation other than resulting from normal wear and tear it may make additional charges under Clause 6 for the replacement parts. All replaced parts shall remain the property of the Company on an exchange basis and the Customer warrants that these will not be subject to any warranty claim or embargo.
- 3.2 The Customer shall report any fault in the installation to the Company at its address as set out in clause 1.1 of these terms or to such other address as the Company may from time to time notify the Customer in writing or by telephone and confirmed by facsimile within one day on Monday to Friday excluding public and statutory holidays in England during the hours 8.30am to 5.30pm ("Working Day") (the "Fault Report").
- 3.3 The Company will use its reasonable endeavours to clear a fault Report in accordance with this response time category specified in the Contract which if not stated shall be category A in Clause 3.4 by
- a. Allocating a service engineer and advising the Customer as soon as reasonably practicable of the number
- b. Carrying out reasonable remote diagnostic checks from the Company's premises
- c. Providing advice by telephone: including advice as to action and checks to be carried out by the Customer
- d. In the event that the actions detailed in clause 3.3 (a) to (c) above do not clear the fault or are considered inappropriate by the Company and unless the Company shall have diagnosed the fault as being due to a software problem, the Company shall visit the site of the installation in order to diagnose and attend to the fault.
- 3.4 The Fault Repair Service shall be provided as follows
- a. Standard care - 5 day: The Company will use its reasonable endeavours to clear a Fault Report within 8 working hours during the period from 9.00am to 5.30pm on a Working Day ("Working Hours"). There is no obligation to carry out work outside Working Hours
- b. Extra Care - 6 day: As for 5 day Service but including Saturday
- c. Total Care - Total Service: The Company will use its reasonable endeavours to respond to a Fault Report within 4 hours at any time throughout the year except on Christmas Day
- d. Special Services: The Company will use its reasonable endeavours to provide other levels of service response. The details of such agreed levels of response shall be set out in writing by the Company and referred to on the face of this Contract.
- 3.5 If while this contract remains in force the Customer acquires any additional equipment which is in addition to or substitution for any part of the installation then the Customer shall promptly give the Company written notice for the Company to include such new equipment within the Services and if the Company agrees to offer the Services for such new equipment within the Services and if the Company agrees to offer the Services for such new equipment then it shall do so on the terms of this Contract (whereupon all references to the installation in this contract shall be deemed to include a reference to such new equipment) and (unless otherwise agreed by the Company in writing) subject to payment of a Supplementary Charge under Clause 6.5 below.
4. Scope of the Service
- 4.1 The Fault Repair Service extends to faults resulting from normal wear and tear and in particular but without limitation, does not cover faults resulting from: misuse; the Customer's failure to perform its obligations under this Contract; unauthorised repairs; modification or maintenance of the installation; failure or fault in any public systems; telecommunications network; incorrect environmental conditions, including without limitation incorrect temperature and humidity levels; manufacture or design faults not rectifiable under manufacturers or suppliers warranty; mains electrical surges or failures; lightning damage or other natural calamity; electro magnetic interference; loss of software and any other accidental negligent or wilful damage, not caused directly by the Company; causes which the Company is unable to identify in the circumstance specified in Clause 8.2
- 4.2 The Company may, at its option, refuse to accept responsibility for the Customer's premises for purposes of inspection, testing and repair.
- 4.3 The Company is not obliged to provide the Fault Repair Service at premises other than installation address specified in this Contract
5. Inspection of installation
- 5.1 If the Company has not carried out a PCI for the installation prior to this Contract then the Company shall be entitled to
- a. Carry out a pre maintenance inspection ("PMI") or test of the installation
- b. Give the Customer a written estimate for restoring the installation to a standard, which, in the opinion of the Company is reasonable and capable of being maintained. The inspection shall be subject to a supplementary charge, payable by the Customer to the Company pursuant to Clause 6.
- 5.2 If the Customer accepts the Company's estimate then
- a. The Company shall without undue delay endeavour to restore the installation to a standard which in the opinion of the Company is reasonable and capable of being maintained provided that time shall not be of the essence in relation to the performance of this obligation and
- b. The Customer shall pay the Company's supplementary charge for parts and labour as estimated pursuant to Clause 6.
- 5.3 If the Customer rejects the Company's estimate then the Company may (without affecting its accrued rights) terminate this Contract with immediate effect by giving the Customer written notice.
6. Charges
- 6.1 The Customer shall pay to the Company the charges shown in the contract ("the Basic Charge") (as may be increased in accordance with this clause 6) for the Services no later than the first day of the month following the Commencement Date and thereafter on each anniversary of the Commencement Date unless and until this Contract is terminated in accordance with the terms.
- 6.2 The Company shall be entitled at any time after the period of one year from the commencement date to increase the basic charge by giving to the Customer not less than 30 day's prior written notice, provided that any such increase shall not exceed a percentage equal to the percentage increase in the General Retail Prices index last published by the United Kingdom Central Statistics office (or its successor for the time being) within 28 days of the date of the notification of the price increase for a period equal to the period from the Commencement Date or the date on which the immediately preceding increase came into effect pursuant to this clause (whichever shall be the later) up to the effective date of the date of the price increase specified in such notice, provided further that no increase may be made pursuant to this Clause 6.2 until a period of at least one year has elapsed since the date on which the immediately preceding increase came into effect pursuant to this clause 6.2.
- 6.3 The Company may increase its basic charge by an amount exceeding the amount calculated in accordance with Clause 6.2 and shall give the Customer 30 days prior written notice (the "Price Increase Notice") of such increases. The Customer shall have the right to terminate this Contract by written notice within 30 days of receipt of the Price Increase Notice without affecting the accrued rights of the Company.
- 6.4 The Customer shall (without prejudice to the Company's accrued rights) pay to the Company within 30 days of the date of the Company's invoice a charge based on its then current rates and prices ("Supplementary Charge") for any costs incurred or services provided by the Company in the following circumstances
- a. Where the Company responds to a fault report and no fault is found to exist by the Company or the fault reported is not one covered by the contract;
- b. Where performance of the Company's obligations is made more difficult or costly by a breach of the Customer's obligations under this contract;
- c. Where the performance of the Company's obligations is made more difficult or costly as a result of the introduction of legislation or regulations, or changes to existing legislation or regulations, or increase in (or new) tax, import duties or levy (including without limitation VAT) imposed on the services, or fluctuation in exchange rates;
- d. Where the performance of the Company's obligations is made more difficult or costly due to any alteration in or addition to the Customer's requirements;
- e. Where the performance of the Company's obligation is made more difficult or costly due to disruptions, delays or additional overtime work arising from causes for which the Company is not directly responsible;
- f. Where in order to repair a fault in the installation, the Company considers it necessary to replace all or part of the installation and does so pursuant to clause 3.1 hereof;
- g. Where a charge is levied pursuant to Clause 5;
- h. Where services are carried out outside Working Hours under this Contract as defined in clause 3.4;
- i. Where additional work is undertaken pursuant to Clause 7(i);
- 6.5 Where the Company agrees to provide the Services in respect of additional equipment to the installation pursuant to Clause 3.5 then payment shall be made in accordance with the arrangements set out in clause 6.1.
- 6.6 The basic and supplementary charges (the "Charges") do not include any applicable VAT or other duties or taxes which may be chargeable in connection with the supply of the Services to the Customer which the Customer shall pay in addition to the Charges.
- 6.7 The Company shall have the right to invoice the Customer of a partial supply of the Services. If full payment of any charges payable hereunder is not made on the date on which it is due then interest shall thereafter be payable on the outstanding balance both after as well as before any judgment at the rate of 4 per cent each month above the Bank of England's Base Lending Rate from time to time in force compounded monthly until payment.
- 6.8 The Customer shall, if requested by the Company, make provision for payment of the Charges as the Company requests.
- 6.9 The Customer shall not be entitled to withhold payment of any invoice by reason of any right of set off of any claim or dispute with the Company, whether relating to the quality of the Services or otherwise.
- 6.10 Any advance on payment made by the Customer at the Company's request shall be held by the Company as a non returnable deposit and not a part payment.
- 6.11 The Company shall have the right to suspend performance of its obligations under the Contract if full payment of any charges payable hereunder is not made on the date on which it is due.
7. Customer Obligations
- 7.1 The Customer agrees:
- a. To allow the Company or its agents, full, convenient and safe access to the installation during Working Hours (as defined in clause 3.4) and such other hours as may be necessary for the proper performance of the Company's obligations or the enforcement of the Company's rights and entitlements hereunder and allow the Company to perform the Services without interruption or disturbance;
- b. To care for and operate the installation in accordance with the Company's and/or manufacturer's and/or supplier's instructions as applicable;
- c. Not to repair, adjust, modify or relocate the installation without the prior written consent of the Company;
- d. Not to connect any other equipment to the installation without the prior written consent of the Company;
- e. To take all reasonable and proper precautions to protect the health and safety of the Company's personnel while on the Customer's premises;
- f. Promptly to carry out any diagnostic and test routines supplied by the Company or included in the manufacturer's instructions, and to allow the Company to carry out remote diagnostic tests where appropriate (if, as a result of the Customer's failure to do so, the Company has to do additional work, the Company may make a Supplementary Charge under Clause 6);
- g. Promptly to carry out all such reasonable action in relation to the installation as may be advised by the Company pursuant to Clause 3;
- h. To take all reasonable steps to eliminate any cause of a fault listed in Clause 4.1;
- i. Not to allow any person other than the Company to repair or maintain the installation;
- j. Promptly to make available to the Company all facilities and services reasonably required by the Company to perform the Services;
- k. To provide a working environment suitable for the installation including without limitation, a satisfactory mains power source and a building earth.
- 7.2 Guarantee
- 8.1 The Company shall repeat the performance of any services carried out under this Contract which are proved to its reasonable satisfaction to be defective without any additional charge being made to the Customer provided:
- a. The Customer as soon as reasonably practicable and in any case within 3 Working Days of completion of the Services informs the Company of the alleged defect and grants the Company full access to the location of the installation; and
- b. The Customer has paid all charges for the Services in full; and
- c. The installation is not defective by reason of the Customer's breach of its obligations under this Contract and in particular but without limitation no unauthorised repairs or alterations have been made to the defective installation; and
- d. The installation has been maintained and used with reasonable care and in accordance with the Company's and/or manufacturer's and/or suppliers instructions as applicable; and
- e. The Customer provides full information and documentation to verify compliance with these conditions and enables the Company to effect the repairs.
- 8.2 If after reasonable efforts (including repeating the performance of the relevant services) the Company is unable to rectify or identify the source of the fault in the Fault Report then such fault shall be deemed not to be covered by this Contract and the Company shall be deemed to have fully discharged its obligations relating therein.
9. Limitation of Liability
- 9.1 The Company accepts liability arising at law for:
- a. Personal injury or death directly attributable to the negligence of the Company; and
- b. Physical damage caused to the Customers property directly arising from the negligence of the Company in connection with the supply of the Services.
- 9.2 The Company's total liability to the Customer under Clause 9.1 (b) above shall not exceed £1,000,000 or the amount that the Company has received from the Customer for the Services, which ever is the lesser.
- 9.3 The Company's liability expressly accepted by the Company under this Clause 9 the Company shall not be liable to the Customer for any loss, expense or damage of any kind (whether direct, indirect, financial or consequential and whether arising from negligence or otherwise) resulting from the supply or failure to supply the Services.
- 9.4 The Customer acknowledges that the price of the service reflects the limitation contained in this Clause 9. The Customer shall effect insurance cover in respect of all risks relating to the Services which are not covered by the guarantee contained in Clause 8 or the liability accepted under this Clause 9.
- 9.5 No officer or employee of the Company shall be liable to the Customer in any circumstances for any loss, expense or damage of any kind (whether direct, financial or consequential and whether arising from negligence or otherwise) arising from any act or omission of his during the performance of his employment or other duties. All officers and employees of the Company from time to time shall be entitled to the benefit of the exemptions, limitations, terms and conditions in this Contract, and for this purpose only the Company enters into this Contract as their agent.
- 9.6 The Company shall not be liable to the Customer for any loss, damage or injury to the extent that it arises from or is caused by the acts of omissions of the Customer or of others including, without limitations, the Customer's failure to comply with the Company's and/or manufacturer's and/or supplier's instructions as applicable.
- 9.7 The Company shall not be liable in any way for any failure or delay in performing under this Contract resulting from circumstances beyond the Company's reasonable control.
- 9.8 The Customer acknowledges that the liability of the Company is limited to the express obligations on its part contained herein and that this Contract does not impose or imply and shall not be deemed to impose or imply any additional duties or obligations on the part of the Company by reason of its position as an expert in its field or otherwise and the Customer hereby agrees to specifically exclude any such additional duties and/or responsibilities.
10. Proprietary Rights
- 10.1 All copyright, design rights, trademarks, knowhow, patent trade secret and other proprietary and intellectual property right in the Services, and all information which the Company may provide to the Customer or its agents shall (as between the parties) belong to and at all times remain vested in the Company, and the Customer shall not acquire any intellectual property rights or license relating to the Services and may not copy or imitate the Services.
- 10.2 The Customer shall treat as confidential all information of a confidential nature which the Company may make available to it (the "Confidential Information") and shall not without the prior written consent of the Company:
- a. Exploit any part of the Confidential Information save as is reasonably necessary to enable it to enjoy the Services; or
- b. Disclose any part of the Confidential Information other than to its employees or Customers (or potential Customers) who need to know the Confidential Information for any purpose of enjoying the services provided that;
- c. Such person owes an express duty of confidence to the Customer.
- 10.3 The provisions of this Clause 10 shall survive the termination of this Contract.
11. Termination
- 11.1 The Company or the Customer (as applicable) may terminate this Contract in accordance with Clauses 2.2 and 6.3.
- 11.2 The Company shall have the right to terminate this Contract immediately without affecting its accrued rights by giving notice to the Customer if:
- a. The Customer defaults in the payment on its due date of any sum payable under this Contract or commits any continuing or serious breach of this Contract and fails to remedy such breach (if remediable) within 10 working days of the Company's notice to do so; or
- b. Any of the following events occurs:
- i. Distress or execution is levied against any of the Customer's assets and not paid or discharged within seven days, or a judgement against the Customer remains unsatisfied for more than seven days; or a receiver is appointed with respect to any of the Customer's assets;
- ii. A petition is presented for the winding up of or for an administration order to be made in relation to the Customer, or a resolution passed for the Customer's winding up (other than a members' voluntary winding up for the purposes of amalgamation or reconstruction on terms approved in writing by the Company); or
- iii. The Customer suspends payment of its debts or is deemed unable to pay its debts for the purposes of the insolvency legislation, or ceases or threatens to cease to carry on its business or any material part as a going concern, or as result of any change in the powers business or circumstances of the Customer it is unlikely to be in a position to fulfil the Contract or any transaction pursuant thereto; or
- iv. A petition is presented against the Customer (or if a partnership of any of the partners forming the partnership) under section 264 of the Insolvency Act 1986.
- v. The Customer (or if a partnership any of the partners forming the partnership) appears unable to pay its debts or appears to have no reasonable prospect of being able to pay the debt pursuant to or as provided in section 268 of the Insolvency Act 1986;
- vi. Any event in a foreign jurisdiction, or comparable with (i) to (v) above;
- vii. The Company's statutory or other governmental authority or license to carry on or to continue performing the Services is revoked or not renewed in any circumstances whatsoever; or
- viii. At any time the Company has reasonable grounds to believe that any of the events mentioned in (a) and (b) above is likely to happen within a period of three months thereafter.
- 11.3 On termination of this Contract for any reason (without affecting the Company's rights):
- a. The Company shall be discharged from any further liability to perform under this Contract;
- b. The Customer shall pay the Company on demand for all Services and other work performed by the Company for the Customer prior to termination; and
- c. The Company is granted an irrevocable license to enter the Customer's premises to recover any goods or materials, which are the Company's property.
12. General
- 12.1 Assignment
- The Customer shall not be entitled to assign the benefit of this Contract whether in whole or in part or to transfer, delegate or subcontract any of its duties or obligations under this Contract.
- The Company shall have the right to assign or otherwise transfer, sub-contract, delegate all or any of its rights and obligations hereunder to an Associated Company or other person.
- 12.2 English Law
- This Contract shall in all respect be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- 12.3 Severability
- Should any provision of this Contract become illegal or void for any reason, the validity of the remaining provisions shall not be affected and the parties shall enter into negotiations in good faith to find a replacement for the provisions, which is of similar economic effect.
- 12.4 Waiver
- Any express or implied waiver by the Company of any term or condition of this Contract or any breach by the Customer may be terminated by the Company at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Company from acting upon that or any subsequent breach or from enforcing any term or condition of this Contract and failure by the Company to exercise any of its rights shall not be a waiver or forfeiture of such rights.
- 12.5 Construction
- The construction of this Contract is not to be affected by any heading.
- 12.6 Notices
- Notices may be given to:
- a. a body corporate by being handed to a Director;
- b. an individual, a partnership or a body corporate by being sent to the party's address or by facsimile, telex or registered first class post and by airmail where appropriate. Each party's address shall be as set out in this Contract unless otherwise notified in writing to the other party. Each party shall promptly notify any change of address to the other in writing.
- 12.7 Continuation of Obligations
- The representations, warranties, undertakings, agreements and other provisions in this Contract shall continue to subsist after termination for so long as may be necessary for the purpose of giving full effect to them in accordance with the terms of this Contract.
- 12.8 No Partnership Etc
- Nothing contained in this Contract shall constitute a partnership or agency between the parties and no party shall hold out as an agent for the other party.