

# Midshire Terms and Conditions

## 1. Definition and Interpretation

**MBSC:** means Midshire Business Systems (Communications) Ltd. (Company number 4351890) whose registered address is Midshire House, Doranda Way, West Bromwich, Birmingham, B71 4LT

**Agreement:** means these Terms and Conditions with the Order.

**Commencement Date:** means the date MBSC agrees to begin the Agreement as set out in the Order.

**Minimum Period:** means the minimum period of the agreement as set out in the Order.

**Duration:** means the duration of the agreement.

**Customer:** means the party purchasing the services as set out in the Order.

**Equipment:** means the Customer's equipment located at the Installation Address.

**Installation Address:** means the location of the Customer's equipment as set out in the Order.

**Maintenance Fee:** means the charge invoiced to the Customer by MBSC for Maintenance Services as set out in the Order and subject to these Terms.

**Maintenance Services:** means the service provided by MBSC as set out in the Order and subject to these Terms and Conditions.

**Order:** means the Service Order Agreement signed by the parties or such other document that MBSC deems to constitute the Order.

**Working Day:** means 09:00 to 17:00 Monday to Friday, but excluding public holidays in the United Kingdom recognised by MBSC.

## 2. General

2.1 The terms and conditions in this contract are the sole terms and conditions of the contract between MBSC and the Customer. No variation or modification of these terms or conditions and no Agreement made, or purported to be made, between MBSC and the Customer inconsistent with these terms and conditions shall be valid, or of any effect, unless made in writing and signed by a Director of MBSC. No representation regarding the Equipment shall be deemed to be made by or on behalf of MBSC, nor shall a representation bind MBSC unless it is made in writing and signed by a Director of MBSC.

2.2 If you give us fourteen prior days notice and we agree, you or your appointed agents may carry out alterations to the Equipment or extension wiring. We reserve the right to inspect such work and, if found by us to be unsatisfactory, we shall inform you and you will remedy the defect within seven days of the inspection. Unless explicitly authorised by MBSC, any alterations, reconfiguration, reprogramming or movement of the Equipment will invalidate this Agreement.

2.3 We exclude from this Agreement any fault, defect or problem that in our opinion was present before the commencement of the Agreement. If we are informed of any problem before commencement we may exclude, include or insist on repair before cover takes effect, at our discretion. Other faults or problems directly or indirectly caused by items described above are also excluded from cover. Our decision on the cause of any fault in these or similar circumstances will be final.

2.4 This agreement commences on the date of acceptance of the Order by MBSC for a minimum period as set out in the Order. It will automatically be renewed at the end of the minimum period for successive periods of 12 months until terminated by either party subject to clause 7. Such written termination to be acknowledged in writing by the other party.

## 3. Duties of MBSC

3.1 You engage us and we agree to provide and carry out only at the Installation Address during the Period the following Maintenance Services subject to the exclusion in clause 5 and 7 using reasonable skill and care:

3.1.1 We will maintain or procure the maintenance of the Equipment at the Installation Address in efficient working order for the Duration of the agreement.

3.1.2 We will use all reasonable endeavours to respond within 4 working hours for a major failure, or 16 working hours in all other cases (being 9.00am to 5.00pm Monday to Friday, excluding public holidays). We define a major failure as more than 50% loss of internal telephones, more than 50% loss of external lines, loss of main switchboard/operator's main telephone.

3.1.3 Our response to you under this contract may be made in several ways, either by telephone where the problem may be solved by simple procedures discussed by oral contact with our technical support operatives, by the operation of remote diagnostic equipment which enables the identification and rectification of faults by means of direct data connection between our computers and your telephone system, or by means of sending an engineer to your site.

3.1.4 If we are of the opinion that a problem is simple in nature and can be rectified by a brief telephone conversation and/or simple action upon the part of the client, we expect reasonable co-operation of the client in order to resolve the problem. We will not unreasonably withhold a service visit by an engineer but in circumstances where we are denied reasonable co-operation and a visit proves the fault to be client error or could have been solved verbally, we reserve the right to make a charge.

3.1.5 We do not maintain any standard "2 wire" telephone devices unless specified explicitly on the contract. Replacement of faulty parts or telephones may be made with reconditioned items at our discretion. Exact replacements may not be available in the case of older equipment so replacements will be made using the nearest possible equivalent item.

3.1.6 We do not guarantee response within the times stated in 3.1.2 in every instance. Time to fault clearance after response time will be variable depending on the nature of the problem.

3.1.7 If faults are proven to lie on any public network connected to the Customer's equipment, we will make a report to the appropriate authority but can in no way accept any liability for the actions or inactions of the network provider or its agents.

3.1.8 Midshire Business Systems Communications Ltd will provide two chargeable hours of remote programming changes per annum free of charge, subject to Midshire Business Systems Communications Ltd being granted remote access to the Customer's Telephone System.

## 4. Duties of the Customer

4.1 You shall at all times:

4.1.1 notify us immediately of any fault in the Equipment and/or repair necessary and promptly provide us with any information which we reasonably require to enable us to proceed without interruption with the performance of this Agreement.

4.1.2 Afford our staff and our other authorised personnel full and safe access to the Installation Address and the Equipment to enable us to carry out the Maintenance Services.

4.1.3 Provide us with, and be responsible for, the safety of such adequate free working space and facilities as may be necessary for the performance of the Agreement.

4.1.4 Comply with all statutory requirements (including those relating to health and safety) which apply to the Maintenance Services and institute safe systems of work at the Installation Address.

4.1.5 Promptly inform us about any facts or opinions of which you become aware which are likely to affect our obligations under this Agreement.

4.1.6 Keep the Equipment at the Installation Address.

4.1.7 Except as provided in clause 2.2 not to yourself maintain, service, repair, adjust, tamper, replace, alter or move the Equipment or the extension wiring.

4.1.8 Re-invoice to your network provider any abortive call invoices raised by MBSC when appropriate.

## 5. Payment

5.1 The Maintenance Fee shall be due on the Commencement Date.

5.2 MBSC will invoice the Customer for the Maintenance Fee quarterly in advance of any billing period unless otherwise stated in the Order.

5.3 We may (without prejudice to our other rights and remedies):

5.3.1 Suspend, entirely at our discretion, performance of any or all of the Maintenance Services if you are in default of your payment obligations under this Agreement, or any other invoice or amount due to MBSC, and:

5.3.2 Charge you interest in respect of late payment of any sum due under this agreement on a day to day basis (both before and after any judgment) at the rate of 8% per annum above the base rate of the Bank of England from the due date for payment until payment is made in full.

5.4 Theft, loss of, or destruction of, or damage to the Equipment, shall not affect your obligations under this clause.

5.5 All payments to account other than Direct Debit will attract an administration charge of £5.00 per month.

## 6. Warranty and Liability

6.1 You acknowledge and agree that:

6.1.1 You are in a better position than we are to foresee and evaluate any potential damage or loss that you may suffer in connection with the Maintenance Services or any other service provided by us under this agreement. And:

6.1.2 These limits of liability shall apply separately to each and every claim against us provided that where any one act or omission or series of two or more connected acts or omissions gives rise to more than one claim, the limits shall apply to the aggregate of all of the claims as though they were a single claim.

6.2 Notwithstanding anything else contained in this agreement, we shall not be liable to you for:

6.2.1 Any failure of the Equipment due to:

6.2.1.1 Use not in accordance with manufacturers' instructions, unauthorised repair, or use of accessories not authorised by MBSC or reprogramming changes made by untrained or unauthorised personnel.

6.2.1.2 Foreign bodies, negligent use, willful abuse, water damage or misuse.

6.2.1.3 Fire, flood, electrical storms, lightning, theft or act of God, operation of industrial motors, machinery, arc welding or high frequency bonding equipment close to the unit or wiring. Note: damage to telephone systems is common during electrical storms and covered by clients' insurance. Such damage is therefore expressly excluded from this maintenance contract.

6.2.1.4 Any delay in the execution of any maintenance or installation works including replacement, alteration, removal or otherwise of, or to the Equipment, howsoever caused and any such delay shall not be sufficient cause for cancellation of this contract.

6.2.1.5 Any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or BT or any other service providers' equipment, lines and/or hosted PBX systems.

6.2.1.6 Any damage caused by the failure of electrical supply to the Equipment.

6.2.1.7 In respect of accidental damage to the Equipment or to your property.

6.2.1.8 Economic loss including, but not limited to, loss of profits, revenues or goodwill (including any such loss or damage payable by you to a third party as a result of an action brought by a third party); or

6.2.1.9 Any other indirect or consequential loss (including any such loss or damage payable by you to a third party as a result of an action brought by a third party) even if the loss was reasonably foreseeable or we had been advised of the possibility of you incurring it and whether arising from negligence, breach of contract or of statutory duty or otherwise; or

6.2.2.0 Any claims which have not been notified to us within 30 days of the date on which you knew, or should have known, of the claims existence.

6.3 We also shall not be liable for any other contractors' invoices for works on the Equipment other than expressly authorised and ordered by a Director of MBSC.

6.4 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## 7. Termination

7.1 This agreement may be terminated:

7.1.1 By either party giving to the other 30 days written notice prior to the commencement of the second or subsequent Period.

7.1.2 By us giving you 30 days notice and refunding the balance of any maintenance fee, if already paid.

7.1.3 Immediately if the other:

7.1.3.1 Being a company has a receiver or administrative receiver appointed, passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order, enters into any voluntary arrangement with your creditors or ceases or threatens to cease to carry on business.

7.1.3.2 Being a partnership (and whether in respect of the partnership or of any one or more of the partners) or an individual (i) is involved in any legal proceedings involving its solvency, (ii) commits an act of bankruptcy or is adjudicated bankrupt or (iii) enters into any composition or other arrangement with its creditors generally (or any class of them) or (iv) has proposals submitted for an individual voluntary arrangement (v) has a receiver, administrative receiver or other creditors representative appointed over any of its assets or property or (vi) ceases or threatens to cease to carry on business.

7.1.3.3 Fails to pay on its due date any sum due under this Agreement.

7.1.3.4 Commits any material breach of any term of this Agreement (other than under clause 7.1.3.3) which, in the case of a breach capable of being remedied, is not remedied within 14 days of a written request to do so.

7.2 A termination under clause 7.1 shall discharge us from liability for further performance of this agreement and shall entitle us to enter the Installation Address or any of your premises and recover any Equipment and materials which are our property (and so that you irrevocably license us, our employees and agents to enter the Installation Address or premises for that purpose).

7.3 Termination of this Agreement shall not affect any accrued rights or liabilities of either party or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

7.4 Early termination will leave the maintenance fees due for the remainder of the current period outstanding and payable on demand.

## 8. Force Majeure

8.1 We shall have no liability to you, or be deemed to be in breach of this Agreement, as consequence of any of the following events:

8.1.1 Flood, storm, severe weather conditions or other natural event.

8.1.2 War, terrorist action, hostilities, revolution, riot or civil disorder.

8.1.3 Any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment or materials (including any computer hardware or software or any records.)

8.1.4 The introduction of, or any amendment to, a law or regulation, or any change in your interpretation or application by any authority.

8.1.5 Any strike, lockout or other industrial action.

8.1.6 Any obstruction of any public or private highway or road or any event which prevents or obstructs access to the Installation Address.

8.1.7 Any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor).

8.1.8 Any other event outside our reasonable control, whether similar or not to any of the foregoing.

## 9. Invalidity or Severability

9.1 If any provision of this agreement is found by any court of administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

## 10. Waiver

10.1 No delay or indulgence by either party in enforcing this agreement shall prejudice or restrict the rights of that party. A waiver of your right shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

## 11. Warranty

11.1 You warrant to us that you have not been induced to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained in this agreement, and you waive any claim for breach of prior presentations.

## 12. Assignment

12.1 You shall not transfer this agreement or any of your rights and obligations under it in any circumstances whether in whole or in part, without first obtaining our prior written consent. If we assign this agreement we will inform you in writing with 30 days written notice.

## 13. Obsolescence

13.1 After the maintained equipment has attained the age of 7 years, maintenance will continue for as long as spares are readily available. After 7 years, total failure of the system main equipment will be deemed beyond fair wear and tear and will not be replaced free of charge. A minimum 10% allowance will be made against the cost of replacement with new if required.

## 14. Notices

14.1 All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the recipient set out in this agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

## 15. General

15.1 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

15.2 This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

## 16. Annual Review

16.1 During the minimum period or any subsequent periods, should there be any additions to the equipment, as itemised in the order, Midshire Business Systems Communications Ltd will adjust the maintenance charge for such equipment at our prevailing rate.

16.2 We may at any time following the first anniversary date of the agreement and upon 30 days prior notice to the customer adjust the maintenance charge. Such adjustments shall not be made at intervals more frequently than one in any twelve month period.