

Telnet Standard Terms & Conditions (Maintenance Agreement)

- This Agreement sets out the terms and conditions under which Telnet shall provide to You maintenance of the Equipment.
- In this Agreement the term
 - "Telnet" means Telnet Limited and (where the context requires any subsidiary and/or associated company of Telnet, but not so as to impose on any such subsidiary and/or associated company any liability to You under this Agreement).
 - You means the customer whose details are set out overleaf, and
 - "Equipment" means the initial equipment details of which are set out overleaf, and any other equipment which You request and Telnet agrees to maintain (subject to the terms of this Agreement).
- Where You indicate overleaf Your wish for this agreement is to be a "Master Agreement" these terms and conditions govern not only the initial Equipment mentioned overleaf, but also without the need for further reference, all other Equipment that may be maintained by Telnet for You whether provided prior to, or following, the date of this Agreement. Where additional Equipment is subsequently brought within the scope of this Agreement, this is subject to the provisions of clause 5.

Term of this Agreement

- This Agreement commences from the date of acceptance in writing by Telnet. This Agreement will continue for the Minimum Term stated overleaf, such Minimum Term being renewable under the provisions set out in Clause 4. If the minimum term box is left blank the minimum term will be 12 months.
- Where during the continuation of this Agreement at Your request Telnet commence maintaining any additional item of Equipment You agree that in respect solely to the additional Equipment brought within the scope of this Agreement, there shall be a Minimum Term equal to that stated overleaf as originally applicable to this Agreement, or as stated in writing by Telnet to You at the time, or where no Minimum Term is stated equal to twelve (12) calendar months in each case commencing from the date such additional Equipment is confirmed as being maintained subject to the scope of this Agreement. On expiry of this Minimum Term the Minimum Term applicable within clause 4 as extended by clause 6 shall be applicable.
- After the expiry of the Minimum Term specified within Clause 4 (and at the expiry of every "Revised Term" as defined in this Clause) this Agreement automatically renews. At the expiry of the Minimum Term (or at the expiry of the Revised Term, as the case may be) this Agreement renews for a further period of one calendar year ("Revised Term") which shall be calculated from the expiry of the original Minimum Term or from the date of expiry of the Revised Term (as the case may be). This automatic renewal reoccurs at the end of the Minimum Term and the end of each Revised Term, and therefore, is perpetual until this Agreement is validly terminated by Telnet or by You.

Maintenance Charge

- The Maintenance Charge as at the commencement of this Agreement will be the sum shown overleaf. The Maintenance Charge is payable by You to Telnet during the continuation of this Agreement. The term Maintenance Charge as used in this Agreement includes the sum or sums payable by You to Telnet from time to time during the continuation of this Agreement. The Maintenance Charge is payable by You either annually, quarterly, or monthly as indicated overleaf.
- The Maintenance Charge is stated exclusive of Value Added Tax ("VAT") or any statutory modification or replacement of VAT. You will pay to Telnet in addition to the Maintenance Charge VAT thereon at the rate prevailing at the date of Telnet's invoice.
- Telnet has the right to increase the Maintenance Charge during the continuation of this Agreement. The Maintenance Charge will only be increased in one of the ways set out in Clause 10.
- Telnet may increase the Maintenance Charge, and You will pay such increased Maintenance Charge, but Telnet will increase the Maintenance Charge to always comply with the following:-
 - unless You have indicated otherwise either as shown overleaf or in writing, where there is a variation in the Equipment maintained by Telnet under the terms of this Agreement, Telnet will alter the Maintenance Charge in accordance with the following formula: [Equipment Retail Sale Price] x [the percentage rate as indicated overleaf]. If the percentage rate box overleaf is left empty and the category of maintenance cover previously provided by Telnet to You was "Standard Cover" (see clause 12) then the percentage rate will be assumed to be 8.5%. Where an alternative category of maintenance cover was previously provided to You then such alternative level of cover will be maintained and the appropriate percentage will be as specified in Telnet's Services Guide, a copy of which is available on request. Telnet has the right to recalculate the Maintenance Charge whenever the description of the Equipment changes, irrespective of the provisions of sub-paragraph (b) of this Clause. You have the right to opt out of the automatic extension of maintenance cover either by indicating overleaf (prior to signature of this Agreement) that You do not wish this provision to apply or otherwise, in writing from You to Telnet. You must indicate your wish not to be governed by the provisions of this Clause prior to You requesting Telnet to maintain additional or alternative Equipment. If you have opted out of this provision, Telnet shall have no obligation to maintain any additional Equipment irrespective of whether such equipment may have been added to or incorporated with Equipment governed by this Agreement.
 - the Maintenance Charge will not (except only where sub-Clause (a) shall be applicable) be increased more than once in any period of twelve calendar months calculated from the commencement date of this Agreement
 - Telnet will give you at least 30 days notice of any increase in the Maintenance Charge (except only where sub-Clause (a) shall be applicable)
 - If any increase in the Maintenance Charge is in excess of 15% above the amount payable by You prior to such increase You have the right to terminate this agreement by giving Telnet 14 days written notice. Telnet must receive this notice prior to the date upon which the increased Maintenance Charge comes into effect. If the increase is 15% or more and Telnet do not receive such notice of cancellation from You, this agreement will continue in full force and effect. This clause does not apply to an increase imposed under the provisions of sub-Clause (a) above, due to alteration or addition to the Equipment

Telnet's Service Obligations to you

- Subject to You observing and performing your obligations in this Agreement, (including but not limited to payment of the Maintenance Charge) Telnet will maintain the Equipment by:-
 - providing all necessary spare parts required as a consequence of fair wear and tear; and
 - maintaining, repairing and adjusting the Equipment as required as a consequence of fair wear and tear to enable the Equipment to function in an efficient working order.

in this clause "fair wear and tear" means the usual deterioration, which would normally be expected and be usual in connection with equipment of identical specification as the Equipment through usual and proper usage in accordance with all manufacturers and Telnet's guidelines. Such term does not include defects in Equipment, parts or maintenance required as a consequence of the occurring of matters mentioned in clause 14(h), nor arising from any defects in manufacture of the Equipment or any component part of such Equipment.
- The type of maintenance cover provided by Telnet to You under this Agreement will be stated overleaf or otherwise agreed in writing between You and Telnet. The type of service cover affects the time Telnet take to respond following receiving from You a request to carry out maintenance. Response includes access to the Equipment remotely as opposed to physical attendance at your premises. Where no specific type of cover has been stated You will receive the Standard Telnet Maintenance cover, details of which are available on request.
- Where a fault in the Equipment is part of Telnet's obligations under this Agreement, Telnet will attempt where possible to correct any fault in the Equipment at the Installation Address, this may be carried out either by physical attendance or via remote access to the Equipment. Where Telnet consider it necessary, Telnet may remove the Equipment to Telnet's offices to carry out any work which may be required.

Your Obligations to Telnet

- Whilst this agreement continues You will pay to Telnet the Maintenance charge which will be payable by You within 14 days of the date of Telnet's invoice. Where payment is made out of this period of time, Telnet reserves the right to charge, and You agree to pay if this right is exercised, interest compounded monthly on all amounts outstanding from You to Telnet at the Rate of 5% above the Base Rate of Barclays Bank Plc from time to time calculated from the date of the invoice to the date payment is received by Telnet. This liability to pay interest continues as well before as after any judgement obtained against You.
 - Where it is necessary for Telnet to take any legal action against You as a consequence of breach of the terms of this Agreement, You will pay Telnet in full all legal costs and expenses which Telnet may incur on a full indemnity basis charged on a solicitor and own client basis.
 - You will ensure the premises where the Equipment is to be installed are in a proper and clean condition. You will comply with all Telnet's recommendations with regard to the condition in which the Equipment is kept. Telnet will be provided free of charge with all electricity and other services we may require when attending your premises to perform Telnet's obligations under this Agreement.
 - You will keep the Equipment at the installation address and will not remove the Equipment without obtaining Telnet's written consent. Such consent will not be unreasonably withheld but Telnet reserves the right to increase the Maintenance Charge to cover additional travelling expenses and other costs, which will be incurred in servicing the Equipment at an alternative address. Such an increase in the Maintenance Charge even if the amount exceeds 15% of the amount previously payable by You, will not entitle You to terminate this agreement under the provisions of sub-Clause 10(d)
 - You will use the Equipment at all times in accordance with the instructions and recommendations of the manufacturer and/or Telnet
 - You will allow Telnet to inspect the Equipment at any time at reasonable hours on a usual working day.
 - You will not allow any person other than a representative of Telnet to carry out any servicing, repair, maintenance, replacement or removal of any part of the Equipment

- You will pay to Telnet at our current charging rate the cost of any work including both labour and spare or replacement parts necessary to the Equipment as a consequence of:
 - neglect or misuse of Equipment by You
 - service maintenance or repair necessary as a consequence of work undertaken to Equipment by some body who is not a representative of Telnet
 - service necessary as You have used materials, supplies or parts not approved by Telnet
 - service maintenance or spares parts required as a consequence of "acts of God" which term shall include, but not be limited to, defects in power supply, power cuts or power surges, the striking of lightning, flood, escape of water, Earthquake, civil commotion, malicious damage, theft or attempted theft, fire, defects arising as a consequence of any structural defect or damage to the building within which the equipment is situated
 - the cost of cables and other equipment required to connect the Equipment to the telephone network service requested by You outside the Telnet Operational Hours applicable to the Type of Service provided by Telnet to You or our attendance when requested by You where there is a fault caused by your user error or where there is no fault in the Equipment
 - any call routing problems caused by another network Service Provider other than Telnet or any subsidiary company of Telnet (including Telnet Solutions Limited).

Termination of this Agreement

- Telnet will continue to perform Telnet's obligations to You, and You will retain these services for the Minimum Term (as stated in Clause 4 including the Revised Term – where applicable – as established by Clause 6).
- This agreement may only be terminated by Telnet or by You in one of the following ways:-
 - by either You or Telnet by giving the other not less than 42 days Notice in writing such notice to expire at the expiry of the Minimum Term or at the expiry of the Revised Term (as the case may be). Where such notice is given but is expressed to expire other than on the date required by this sub-Clause such notice shall be interpreted as notice to terminate this Agreement on the earlier possible date, which complies with the provisions of this sub-Clause.
 - this Agreement will automatically terminate if You, being an individual, commit an act of Bankruptcy or have a receiving order made against You or being a company You are made insolvent or have winding up proceedings issued against You or a receiver is appointed of all or part of your assets or You make a composition or arrangement with your creditors
 - if You are at any time in breach of any of the obligations upon You under this agreement and You fail to remedy this within 14 days of notice of such breach being given to You by Telnet, Telnet shall be entitled but not obliged to terminate this Agreement
 - if it is necessary for Telnet to replace parts within Equipment, which are not parts provided for within the Maintenance Charge, Telnet will provide to you an estimate of the cost of replacement. If you decline to accept Telnet's estimate, this Agreement may be terminated by Telnet giving You 14 days Notice in writing
 - if, in Telnet's reasonable opinion, Equipment cannot be economically maintained to the standard required by this contract, Telnet will notify you of the cost of either replacing Equipment or reconditioning the Equipment. If you do not agree to be responsible for such costs as quoted by Telnet within 14 days then Telnet may terminate this agreement by writing to You.

Effect of termination

- upon termination of this agreement You will pay to Telnet all sums which are due calculated up to the date of termination, such sums are payable on demand
 - If this agreement is terminated for any of the reasons mentioned in 16 (b) (c) or (d) above then You will pay to Telnet the following:-
 - all sums due under the terms of this agreement including an apportionment of charges due to Telnet but not invoiced calculated pro rata from the date You made your last payment until to the date of termination, and
 - all payments which would have been due under the terms of this agreement until the expiry of the Minimum Term or the Revised Term (as the case may be) had this agreement not been terminated, provided always the amount payable under this sub-Clause will be discounted by Telnet by such sum as reflects the saving to Telnet in no longer providing service to You and further such sums will be discounted by Telnet to reflect early receipt of payment.

Limitations

- Without limitation to the foregoing:-
 - Telnet's obligations to You are as stated in this Agreement, no other duties are to be implied or inferred other than those specifically stated herein.
 - Telnet shall have no liability to You for any loss of whatsoever nature which may arise directly or indirectly as a consequence of any fault in Equipment, Telnet's sole obligation is to repair and carry out maintenance to Equipment where this arises from wear and tear as defined in clause 11. Telnet cannot, and nothing in this Agreement imposes any, guarantee of continuous and effective working of Equipment. Telnet are not manufacturers of the Equipment and cannot be responsible for the Equipments performance, reliability or compatibility with any other equipment or service. The existence of this Agreement is not an alternative to a business continuity policy, disaster recovery procedure, back up procedure or similar which a prudent business in the same position as You would normally implement.
 - Telnet shall not be liable to the You for any loss of revenue, loss of business, any purported loss of profit or any other form of consequential loss arising from breach of the terms of this Agreement.
 - Although Telnet will use reasonable endeavours to respond to any request from You for maintenance and/or repair to be carried out, within any response time agreed between You and Telnet, Telnet shall have no liability to You for any loss of whatsoever nature which may arise from any failure of Telnet to actually attend in any response time agreed with You. All response times are for guidance only. Response includes automated remote access to the Equipment in addition to, or as an alternative to an engineers physical attendance at Your premises.
 - Notwithstanding that response times may be agreed these are not time frames within which any default or fault, will be rectified. Where defects are Telnet's responsibility, reasonable endeavours will be used to rectify the same in a timely manner following Telnet's initial response to identify the nature of any defect. No guaranteed rectification time is given and no liability incurred by Telnet due to inability to use Equipment pending rectification. It is acknowledged by You that intermittent defects can take a significant period to identify and subsequently to rectify.
 - You acknowledge that Telnet cannot exercise any control over the internal workings or industrial relations within British Telecom or any other public network telecommunications provider or connection of telephone service to Equipment. Telnet shall make all reasonable endeavours to assist You in the event of network fault but cannot be held responsible for any delays or loss or damage caused on the part of any network telecommunications provider or any other contractor involved in the provision of related goods or services.
 - Where rectification of a fault in the Equipment is the responsibility of Telnet but requires replacement part(s) to remedy, Telnet do not hold stock of all replacement parts which may be required in every eventuality and its obligation is to seek to obtain such replacement part(s) required as soon as reasonably possible from the manufacturer or other supplier. Telnet are not liable for any delay arising from unavailability of spare parts, nor from inability to use the Equipment pending receipt of the same.
 - If You are in breach of this Agreement (including but not limited to failure to make payment due to Telnet or any subsidiary or associated company of Telnet any sum which shall have then fallen due), Telnet shall have no liability to carry out any of Telnet's obligations under this Agreement until such time as all breaches have been remedied to the reasonable satisfaction of Telnet.
 - Where a fault occurs in a remote VoIP telephone extension e.g. "Teleworker Extension", you acknowledge that this agreement does not provide support for the IP connection of the remote extensions and that this will be the responsibility of the appropriate Service Provider. In such cases Telnet will not be obliged to provide on-site support and will not be liable for any delay in re-establishing service to the remote extension.

General

- This Agreement may not be assigned in whole or in part, by You without the prior written consent of Telnet, such consent not to be reasonably withheld. Telnet shall have the right without notice to assign, sub-contract or otherwise deal with all or any of its rights and obligations under this Agreement.
- This Agreement represents the entire Agreement and understanding of the parties and supersedes all prior agreements, whether written or oral. This Agreement may only be altered or amended in writing and signed by both parties.
- Failure by Telnet to exercise or enforce any right conferred by this Agreement shall not be deemed to be waiver of any such right nor operate so as to bar the exercise or enforcement thereof, or of any other right on any later occasion.
- Any notice or other correspondence, which needs to be given to You, will be deemed to be given if sent by post to the address to which Telnet submits accounts for the Services. You will inform Telnet of any change to this address. Any notice or other correspondence which needs to be given by You to Telnet's will be deemed to be given if sent by post to the address as appears on the last invoice rendered to You or such other address as may be prescribed by Telnet for that purpose in writing to You during the continuation of this Agreement.
- This Agreement shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- If, for any reason, a provision of this contract proves to be void or unenforceable, this will not affect the validity or enforceability of the remaining provisions of this contract, which will remain in full force and effect.