

HBT Maintenance Terms and Conditions

This Maintenance Terms and Conditions ("**Agreement**") is hereby entered into and agreed upon by you, either an individual or an entity ("**You**" or "**Customer**") and H.B. Telecom (UK) Limited ("**HBT**") for the Services (as Defined below). This Agreement is made and entered into as of the date that You accept it as Defined below (the "**Commencement Date**").

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND HBT AND SETS FORTH THE TERMS THAT GOVERN THE SERVICES PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Interpretation

1.1. Definitions

In this Agreement, unless the context otherwise requires, the expressions and terms listed in Schedule 1 (**Definitions**) shall have the meaning stated in that Schedule.

1.2. Construction of certain references

1.2.1 In this Agreement where the context admits:

- 1.2.1.1 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions of which they are re-enactments (whether with or without modification);
- 1.2.1.2 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to Agreement includes the Schedules.
- 1.2.1.3 this Agreement shall be binding on, and inure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.

1.3. Precedence

Save for where the Order Form states otherwise, if there is an inconsistency between the Agreement, the Schedules or an Order Form, the following order of precedence shall apply to this Agreement and the documents referred to in it:

- 1.3.1 the Clauses in the main body of the Agreement;
- 1.3.2 the Schedules; and
- 1.3.3 the relevant Order Form.

Save where Clauses in the Agreement and its Schedules are specifically dis-applied or varied in any special conditions for a particular Order Form, in such a case, the special conditions in the relevant Order Form shall take precedence over the Clauses in the Agreement and the Schedules, if there is an inconsistency between the special conditions and the Clauses in the Agreement and the Schedules, solely in respect of the relevant Order Form.

2. Term of this Agreement

2.1 This Agreement shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the express terms of this Agreement) for the Initial Contract Period.

- 2.2 Subject to clauses 4.4, 5.2, 7 and 10.2 of this Agreement, this Agreement shall, in all circumstances, continue in full force and effect, for the whole of the Initial Contract Period, and shall continue after the Initial Contract Period unless terminated by either Party giving not less than ninety (90) days' prior written notice, such notice not to expire, in any event, sooner than the expiry of the Initial Contract Period ("Notice"). In the event that no such Notice is given by either Party, the Agreement shall automatically continue in full force and effect after the Initial Contract Period, on a rolling annual basis of twelve (12) months each (each a "Subsequent Renewal Period"), unless and until either Party provides not less than ninety (90) days' prior written notice, such notice not to expire sooner than the expiry of the relevant Subsequent Renewal Period.
- 2.3 HBT shall use its reasonable endeavours to activate and make the Services available by the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. HBT shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter.
- 2.4 No order shall be binding upon HBT unless and until accepted by HBT.

3. HBT Obligations

- 3.1 HBT shall maintain the Equipment at the installation address (or such other address as may be agreed in writing by HBT) in efficient working order and, during the continuance of this Agreement, it shall execute by its servants, agents or contractors without charge all repairs and replacements to the Equipment necessitated by fair wear and tear and/or faulty workmanship and/or faulty materials provided the Customer shall have duly notified HBT of such fault or necessary repair in accordance with clause 4.3 hereof. Such Service is to be provided between the hours of 9.00 am and 5.00 pm Monday-Friday, excluding Public Holidays. HBT shall be under no obligation to service the Equipment if any such maintenance Charge is overdue.
- 3.2 At the expense of the Customer, HBT shall provide services where failure of the Equipment is subsequently found to be due to the mis-operation or failure of British Telecom equipment and/or any other service provider, Host PBX systems and/or electricity supply service or if any person not authorised by HBT to do so shall have tampered with the Equipment.
- 3.3 The Services are provided solely for use by the Customer in the course of the Customer's business.
- 3.4 HBT shall use reasonable skill and care when providing the Services but does not guarantee that the Services shall be continuously available to the Customer or free from Service Failures.
- 3.5 HBT shall not be liable for any delay in the execution of any work of installation, repair, replacement, alteration or removal of or to the Equipment howsoever caused.
- 3.6 HBT shall not be liable for making good defects in the electricity supply, British Telecom telephone service and connections and/or any other service provider, Host PBX systems. Service calls for these purposes will be charged to the Customer at HBT's standard rates.
- 3.7 HBT shall not be liable for repair of damage resulting from accident, transportation, neglect or misuse, failures or electrical power or causes other than ordinary use.
- 3.8 HBT shall in no circumstances be liable for any failure or defective working of the Equipment due to any fault, failure or charge in the electricity supply service and/or British Telecom's equipment and/or any other service provider, Host PBX systems.
- 3.9 HBT shall not be liable for making good defects to the Customer's telephone stations or other peripheral apparatus and service calls for these purposes will be charged to the Customer at HBT's

standard rates.

- 3.10 HBT shall not be liable for costs of making good defects in the overhead and underground cables from the 'Associated Wiring' and service calls for these purposes will be charged to the Customer at HBT's standard rate.
- 3.11 HBT shall not be obliged to provide the Services to the Customer if the Customer enters into this Contract otherwise than in the course of its business or uses the Services otherwise than in the course of its business, if the Customer is not located in a geographic location where the Services can be received, or where there is a technical reason why the Customer would not be able to receive the Services.
- 3.12 At the request and expense of the Customer, HBT shall move the Equipment to alternative premises where, in the opinion of HBT, suitable service and reception facilities exist, provided that the Equipment does not thereby pass out of the possession or control of the Customer.

4. Customer Obligations

- 4.1 The Customer shall pay the Charges in all circumstances and if at any time should the whole or any part thereof be in arrears for more than thirty (30) days then HBT shall be entitled to suspend all Services hereunder until payment is made in full.
- 4.2 The Customer agrees that if the Equipment is to be connected to British Telecom apparatus to comply with all British Telecom requirements, it shall be at the Customer's expense to arrange the provision of any British Telecom equipment specially required for the Customer's purpose.
- 4.3 The Customer shall notify HBT immediately of any fault in the Equipment or any repair which may be necessary, such notification to be confirmed in writing and to provide HBT at all reasonable times with access to the Equipment and allow it to carry out maintenance of the Equipment under the terms of this Agreement.
- 4.4 The Customer shall not maintain, service, repair, adjust, tamper or alter the Equipment or Extension wiring. In the event of requiring any alterations to the Equipment or Extension wiring, the Customer shall give HBT fourteen (14) days' written notice and, should any such alterations be effected by an agent not appointed by HBT, to allow HBT the right of inspection of that work which should be carried out in accordance with the current "Code of Practice" and should the work be found to be unsatisfactory to remedy the defect within ninety (90) days of inspection or pay HBT's charges for effecting the remedy. Any breach of this condition may result in this Agreement being terminated by HBT.
- 4.5 The Customer shall pay HBT's charge for reprogramming and/or service visits as a result of a programming error effected by the Customer or his agent.

5. Charges and Payment

- 5.1 The Customer shall pay HBT the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Customer with effect from the Start Date.
- 5.2 HBT may vary all or any of the Charges at any time on giving not less than thirty (30) days' notice to the Customer. This notice may be included in an invoice to the Customer. If, during the Initial Contract Period, HBT increases the Charges by more than the Retail Price Index (RPI), the Customer may terminate the Agreement during the Initial Contract Period on written notice to the Company within thirty (30) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.
- 5.3 For the avoidance of doubt, any increase to the Charges that would not have increased the Customer's

immediately previous monthly total bill for that specific Service, (if the increase(s) had applied for the whole of that month) by more than the RPI annual inflation rate at the date HBT notifies the Customer of the applicable increase in the Charges, shall not entitle the Customer to terminate the Agreement.

- 5.4 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in HBT invoices at the applicable rate(s).
- 5.5 HBT shall issue invoices for the Services in accordance with the billing dates specified in this Contract.
- 5.6 The Customer shall pay the Charges within fourteen (14) days of the date of the relevant HBT invoice, unless otherwise agreed by HBT. The Customer shall not be entitled to set-off, contra or withhold any payment due to HBT against any sums of whatsoever nature that are due to the Customer from HBT or that the Customer claims are due from HBT, and time of payment of all sums under this Contract is of the essence.
- 5.7 Where Charges are not paid by the Customer in accordance with this clause 5, HBT may require the Customer to pay all sums due under this Contract on demand, and reserve the right to charge Interest on all amounts overdue from the Customer on a daily basis (before as well as after any judgement) until the date of payment, at Natwest base rate plus four percent (4%).
- 5.8 All Charges are stated exclusive of Value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in HBT invoices at the applicable rate(s). Payment shall be by Direct Debit and a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debit or charges may be applied. If payment is not made by Direct Debit, an administrative charge of £5.00 per month shall be applied.
- 5.9 If you believe all or any part of an invoice is in error, you must notify HBT Communications within 6-months (180) days of your receipt of the invoice. If you fail to do so, HBT Communications will not be required to make any adjustment to the invoice, and you shall be deemed to have waived any right to contest the invoice.

6. Access to Premises and Information

- 6.1 The Customer shall provide to HBT, or such third party nominated by HBT, such information and documentation relating to the implementation, maintenance and support and/or administration of the Services as is necessary to enable HBT and/or its contractors to implement, maintain and support and administer the provision of those Services.
- 6.2 The Customer shall ensure that HBT, its contractors and/or any third party providing the Services are provided with such access to the computer equipment, software and network links owned by, licensed to and/or used by the Customer as may be reasonably necessary for the implementation, maintenance and support, administration and/or other performance of the Services.
- 6.3 The Customer shall ensure, prior to the date on which HBT, its contractors and/or any third party providing the Services commence the provision of any services in connection with the implementation, maintenance and support and/or administration of any Services at the premises of the Customer that:
 - 6.3.1 such premises provide adequate working space and facilities as HBT, its contractors and/or any third party providing the Professional Services may reasonably require to carry out such services;
 - 6.3.2 it has obtained all necessary consents to enable HBT, its contractors and/or any third party providing the Services to enter onto and remain upon the premises to carry out such services;and

6.3.3 the Customer shall effect and maintain throughout the provision of such services insurance cover for the benefit of HBT, its contractors and/or any third party providing the Services and their respective employees, agents and contractors against any and all reasonably foreseeable risks in providing the Professional Services at such premises on terms reasonably acceptable to HBT and/or its contractors.

7. Termination

7.1 If at any time during the Term of the Agreement:

7.1.1 the Customer commits a material breach of this Agreement and in case of a breach which is capable of remedy, fails to remedy the breach within thirty (30) days of written notice (for the avoidance of doubt, this clause 7.1 shall not apply to any material breach of this Agreement committed by HBT), or

7.1.2 a Party becomes insolvent,

then the other Party shall have the right to terminate this Agreement forthwith.

7.2 HBT shall also have the right to terminate this Agreement immediately upon written notice if:

7.2.1 Customer fails to timely pay any and all undisputed amounts due and Customer fails to cure such non-payment within ten (10) days after receiving written notice of such non-payment from HBT, or

7.2.2 there is a change of control of the Customer.

8. Information and Confidentiality

8.1 The Customer will provide HBT with any information which HBT may reasonably require to enable to proceed with the performance of its obligations under this Contract.

8.2 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights.

8.3 These restrictions shall not apply to any information which is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 8, is acquired from a third party who owes no obligation of confidence in respect of the information, has been independently developed by the recipient, or is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

9. Limitation of Liability

9.1 HBT shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect), loss of, corruption of, or damage to data or software (whether direct or indirect), any special indirect or consequential loss or damage or any loss

suffered by any third party or any liability to any third party.

- 9.2 The total liability of HBT (other than liability governed by clause 9.4) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Charges paid to HBT in the previous twelve (12) months, for any one cause of action or series of causes of action arising out of the same event, act or omission (the "**Per Claim Cap**") and, in the aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any twelve (12) month period.
- 9.3 HBT's liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".
- 9.4 Nothing in this Contract shall exclude or restrict the liability of either party for death or personal injury arising as a result of its negligence, for its fraud; or for any other liability which cannot be excluded or limited by law.
- 9.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 9.6 HBT are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.
- 9.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of HBT arising under this Contract.
- 9.8 HBT shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.

10. Force Majeure

- 10.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges and to indemnify HBT where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.
- 10.2 If any event described in clause 10.1 lasts more than fourteen (14) days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving thirty (30) days written notice to the other party.
- 10.3 A party relying on this clause 10 shall use reasonable endeavours to mitigate the effects of a force majeure event.

11. General

- 11.1 The Contract shall not create or constitute a partnership, joint venture or agency relationship between

the Parties.

- 11.2 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 11.3 No failure to exercise, or delay in exercising a right, power or remedy provided by the Contract or by law shall constitute a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.
- 11.4 This Contract does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 11.5 Customer shall not assign, charge or otherwise deal with all or any of its rights and obligations in the Contract in whole or in part without the prior written consent of HBT.
- 11.6 All notices, requests and other communications called for by this Contract will be deemed to have been given immediately if made by electronic mail (confirmed by concurrent written notice sent first class post, postage prepaid) to the addresses set out herein.
- 11.7 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods shall not apply and both Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1: Definitions

In these terms and conditions (unless the context otherwise requires):

Charges mean the maintenance charges payable by the Customer to HBT for and/or in connection with the provision of the Services as set out in HBT Price List and any other charges payable pursuant to this Contract or otherwise agreed in writing between HBT and the Customer;

Commencement Date means the date upon which this Contract is executed by both parties;

Confidential Information means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

Contract means the contract between HBT and the Customer comprising these Terms and Conditions, together with the Order Form and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto;

Customer means the person (not being an individual consumer), proprietorship, partnership, corporation, government or other subscription or publicly funded enterprise, company or other body corporate named in the Order Form;

Equipment means any hardware and/or peripherals owned, controlled, licensed or provided by the Customer;

Initial Contract Period means the period commencing on the Commencement Date and running for thirty-six (36) months or as otherwise specified in the Order Form;

HBT Price List means the list of charges [set out in the Order Form] OR [in force from time to time and available on the HBT Website, together with the method of calculation of the charges];

HBT Website means the website located at www.hbtcommunications.com or such other website as may be notified by HBT from time to time;

Order means an order placed by the Customer with HBT for the provision of Services;

Order Form means the application form containing the details of an order for Services placed by the Customer;

HBT Equipment means any hardware, peripherals and/or other equipment supplied to the Customer by HBT for use in respect of the Services;

Service Failures means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of HBT;

Services means the maintenance services to be provided by HBT and/or any of its contractor(s) to the Customer pursuant to this Contract as described in the Order Form as such services may be amended from time to time in accordance with this Contract (and "Service" shall mean any one of the Services);

Start Date means the target date for the commencement of the provision of the Services to the Customer as specified or agreed to by HBT;