

TNBN Break Fix Maintenance Terms and Conditions as from 1/1/2016

TNBN has agreed to provide and the Customer has agreed to engage TNBN to provide the maintenance services in respect of the Equipment as described in the TNBN Schedule, upon and subject to the terms and conditions of this Agreement and the Schedule hereto ("the Agreement").

This Agreement shall override any terms and conditions contained in or referred to in any document from the Customer and shall supersede all prior agreements, offers and discussions (oral or written) between the parties regarding the subject matter of the Agreement. No amendment or variation may be made to this Agreement unless agreed (as an amendment or variation) in writing by an authorised officer of TNBN. If this Agreement has not been executed by the Customer prior to the commencement of the Services it shall be binding on the Customer when the Customer accepts the Services.

1. MAINTENANCE PERIOD AND CHARGE

(a) This Agreement shall start on The Commencement Date of the TNBN Schedule and shall continue for the minimum term of 1 year as specified in the TNBN Schedule and thereafter from year to year (each year starting on the anniversary of The Commencement Date) until terminated by Notice in writing by either party to the other, such Notice to be received a minimum of 90 days prior to the next anniversary of The Commencement Date (referred to hereafter as the "Notice"). Such Notice will be acknowledged in writing by TNBN within 5 working days of its receipt of the Notice, the acknowledgement being sole evidence that Notice has been given. The Customer is therefore strongly advised to submit any Notice in good time and confirm receipt of the Notice by TNBN.

(b) The Annual Maintenance Charge for the initial period of 12 months shall be the charge at the yearly rate within the TNBN Schedule of this document. The Annual Maintenance Charge for periods after the initial period will be adjusted by a rate not exceeding the variance indicated by the BEAMA (The Federation of British Electrotechnical and Allied Manufacturers' Associations) indices for Electrical Engineering during the twelve month period prior to the review. The Annual Maintenance Charge for each year during which this Agreement continues shall be paid before the date on which that year begins together with any applicable VAT or other tax.

i. If Notice is given, as defined above, before the expiry of the minimum term shown then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.

ii. If Notice is given, as defined above, after the expiry date of the minimum term shown then payment is due up to the end of the current year of cover.

iii. If Notice is not given, this agreement will be deemed to continue from year to year.

iv. Where Notice has been given, TNBN shall cease to provide service immediately after the period for which payment has been received.

(c) TNBN may from time to time increase its Annual Maintenance Charge by an amount exceeding the BEAMA rate and shall give the Customer 30 days' prior written notice of such increase ("the Price Increase Notice"). The Customer shall have the right to terminate this Agreement by written notice within 30 days of receipt of the Price Increase Notice without affecting the accrued rights of TNBN.

(d) If in TNBN's opinion (acting reasonably) it becomes uneconomic to maintain the Customer's telephone system, TNBN reserves the right to give the Customer 90 days termination notice at any time.

(e) Without prejudice to its other rights and remedies, in the event that full settlement is not received in respect of an invoice prior to the service commencement date to which the invoice relates, TNBN may charge the Customer a £25 (plus VAT) administration fee, together with interest at 4% above the prevailing base rate of LloydsTSB Bank plc from the due date until payment is received by TNBN.

2. MAINTENANCE AND REPAIR

(a) During the period of the Agreement, in consideration of the payment of the Annual Maintenance Charge, TNBN shall as soon as is reasonably practicable provide the services of a maintenance engineer to carry out any maintenance of and repairs and replacements to the Equipment that may be reasonably requested by the Customer and shall carry out free of any extra charge any maintenance, repairs and replacements (including the provision of any necessary materials and spare parts) as shall be necessary as a result of fair wear and tear arising from the proper operation of the Equipment. Replacement parts will become the property of the Customer, and replaced parts the property of TNBN. Replacement parts will be of at least equivalent functionality but may not be identical model or colour. Any maintenance, repairs or replacements or Customer visits caused other than by fair wear and tear may be carried out at the Customer's expense at TNBN's current rates. The response time for these faults will be guided by the TNBN service level defined in Clause 2(c) below. All maintenance, repairs or replacements may be carried out at the premises where the Equipment is installed or elsewhere at the option of TNBN. For the avoidance of doubt TNBN's response may be fulfilled either by accessing the system remotely with a view to diagnosing the fault or by having an engineer attend site with a view to diagnosing the fault.

(b) This Agreement does not cover the following items unless they are specifically detailed in the Equipment Covered section within the email attached or schedule sheet incorporated by way of a supplementary contract as described in 3(c) below:

i. Overhead, underground, concealed internal or external cabling.

ii. Two or four wire telephone handsets, otherwise known as POT Phones or digital handsets.

iii. Structured cabling systems such as CAT5.

iv. On PBX systems, cabling from the telephone system central processing unit to the line-jack unit.

v. Call loggers, voicemail, battery back up including batteries and other additional ancillary and outer equipment.

vi. Cleaning of equipment; commissioning, programming or de-commissioning of the system or part thereof.

(c) This Agreement does not cover preventative maintenance visits or investigation visits upon failure, which may be arranged with TNBN for an additional fee.

(d) Definition of Level of Service as detailed in Part 8 of the Schedule:

i. 16Hr Mon to Fri 9 to 5 – TNBN will respond to the fault either remotely or by sending an engineer to site within 16 working hours, Monday to Friday, 9.00am to 5.00pm, excluding public and bank holidays.

ii. Special/Extended Terms/Flex24 – This is specified in Part 8 of the Schedule, if applicable, and is subject to a fee premium.

(e) Where the Customer requests that the remedial work carried out by TNBN is done outside of the contracted hours then TNBN may charge at its current rates for this.

(f) Where a fault has been logged and TNBN has responded and no fault exists on the Equipment then this is deemed to be an "Abortive Visit". Abortive Visits will be charged to the Customer at TNBN's current rates. Where a fault has been logged and TNBN is unable to gain access to the Customer's premises during the hours contracted then TNBN may charge the Customer an Abortive Visit call out fee.

(g) Where parts are delivered to the Customer and the Customer is due to return an equivalent part to TNBN, TNBN will invoice the Customer the normal selling price of the part in the event that the part is not returned to TNBN within two weeks of receipt by the Customer of the replacement part. TNBN will also invoice the Customer for the cost of repairing any damage to the part which reasonably appears to have been caused by the inadequate packaging by the Customer.

(h) Where parts are delivered to the Customer by courier and/or electronic worksheets are used, the Customer agrees that electronic signatures applied in acknowledgement of parts delivered or services rendered will have the same legal force as hard copy signatures.

(i) It is understood that TNBN cannot make appointments to carry out remedial work to faults. TNBN operates an allocation and scheduling system that prioritises faults according to severity of the fault and the level of cover provided. TNBN will endeavour to attend the fault at the earliest opportunity within the cover period. Any estimates relating to the time that engineers will either attend site or respond remotely are only best indications and must not be taken as firm appointment times. TNBN cannot be held responsible for responding to faults at a different time to that estimated.

(j) For the purpose of Clause 2(d) any reference to public and bank holidays shall refer to the public and bank holidays that exist in the country where the site is located as referred to in the TNBN Schedule.

(k) TNBN is not responsible for providing software upgrades, enhancements or patches free of charge.

For health and safety reasons, TNBN reserves the right to decline to attend the Customer's site if TNBN's engineer will be alone on site or in an isolated area of the site.

(L) Should PBX failure be due to any external source (hot temperature's, electrical surges or any other means other than fair wear and tear) will be at the customers expense.

3. ALTERATIONS TO EQUIPMENT AND EXTENSION WIRING

(a) All alterations to apparatus and extensions to wiring (including removal and reinstallation to a new site) shall be carried out by an installer authorised by TNBN. TNBN reserves the right to carry out a Maintenance Acceptance Test ("MAT") on this new equipment. TNBN may charge at its current rates for this MAT.

(b) Any alterations to Equipment and wiring shall be notified to TNBN within 14 working days of the commencement of the works.

(c) TNBN may adjust the Annual Maintenance Charge if the Equipment is altered, in accordance with its current level of charges. In this event, the Customer shall sign a supplementary contract, detailing the additional equipment and the additional maintenance charge.

(d) Where insufficient notice is given in accordance with Clause 3 (b) above then TNBN may ask for proof of the date of installation relating to any additional equipment and TNBN may retrospectively charge for the maintenance of this equipment in line with its current rates.

(e) For the avoidance of doubt if the Customer adds new parts to the Equipment detailed in Part 3 of the TNBN Schedule then this will be automatically maintained by TNBN, at TNBN's discretion. TNBN will as a consequence invoice the Customer for the maintenance of these new parts.

4. INSPECTION OF INSTALLATION

TNBN may request to carry out an MAT prior to responding to the first fault that is logged. TNBN may carry out the MAT as a separate visit. If the MAT is passed then faults may be logged with TNBN and service will commence. If the MAT is failed then TNBN reserves the right to request that any specific remedial action be carried out (at the Customer's cost) prior to attending to any fault. Where the MAT is failed but where any necessary remedial action can be carried out by TNBN then TNBN may carry this out and charge this to the Customer at its current rates.

5. CARRIER'S LIABILITY

Where the fault that has been logged has been a non-system fault, but instead one of the carrier (i.e. British Telecom or Cable & Wireless etc) then TNBN will charge the Customer for the call out and any parts used at its current rates. TNBN will provide a carrier fault reference that can be used to recharge the cost that TNBN has charged, on to the carrier. TNBN cannot accept responsibility where the carrier refuses to cover all these costs.

6. THE CUSTOMER'S RESPONSIBILITIES AND LIABILITIES

(a) The Customer shall notify TNBN either orally or in writing as soon as possible of any fault in the Equipment or of any work or maintenance that may be necessary. TNBN may at its option repair at its current rates faults or damage that have arisen because of the failure of the Customer to notify TNBN properly.

(b) The Customer shall not allow the Equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by TNBN in relation to the operation and care of the Equipment. TNBN may at its option repair at its current rates faults or damage that have been caused by such moving, interference or tampering or by any failure by the Customer to comply with TNBN's directions.

(c) Should any maintenance, repair, replacement, alteration or addition be made to the Equipment other than by TNBN or its authorised installer, TNBN may terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge.

(d) The Customer shall at its expense comply with all statutory requirements, bylaws, obligations, regulations, recommendations or instructions relating to the use or testing of the Equipment. The Customer shall obtain and pay for any licences, way leaves, suitable private wires, jack sockets or any other items necessary for the operation of the Equipment. Suitable electric supplies where needed shall be provided and maintained by the Customer at its expense.

(e) The Customer shall give TNBN and its representative's unhindered access to the Equipment and shall at its expense make available mains electric supply and any other facilities, services and co-operation as may be necessary for the proper and prompt maintenance or repair of the Equipment under this Agreement.

(f) The Customer shall ensure site plans are accessible to TNBN on each visit. The Customer shall ensure that all programming performed by a third party is backed up and made available to TNBN. It is advised that both the site plans and programming diskette are located next to the system.

(g) Where the system allows remote access via a modem, it is the Customer's responsibility to provide a suitable modem in order for TNBN to respond adequately to any fault. Where access is deliberately denied via a modem then TNBN may increase the Annual Maintenance Charge by up to a further 50%.

(h) The Customer shall maintain an environment suitable to support efficient operation of the Equipment. The Customer is responsible for any damage caused by electrical surges, flooding, lightning, over heating or other external influences, which do not constitute fair wear and tear. TNBN will charge the Customer for parts and labour in respect of such damage at its current rates. In the event of disagreement as to whether work is chargeable or not, TNBN may provide reasonable but not necessarily absolute evidence of such external influences, however the Customer's signature on a relevant chargeable job sheet or email will in any event signify its acceptance that the work is chargeable.

(i) Prior to commencement of work by TNBN at the Customer's Premises, the Customer shall inform TNBN's employees or sub contractors attending the Premises of all relevant health and safety regulations relating to the Premises and any issues relating to dangerous substances, asbestos and similar risks, and the Customer shall comply with all relevant legal requirements including its employer's duties under health & safety legislation.

(j) Where the Customer's internal control procedures require a purchase order to be raised for chargeable work undertaken by TNBN, it is the Customer's responsibility to ensure that this occurs: TNBN can accept no delay in payment due to the absence of such purchase order

(k) If the Customer fails to observe the provisions of this Agreement, TNBN may decline to respond to a fault and/or may terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge.

(l) TNBN shall not be liable for any costs, or consequential losses or consequential costs relating to telephone calls or any malicious acts resulting from these telephone calls made in a malicious or otherwise manner, made through the telephone system either from within the Customer's premises or by a third party obtaining access to the Customer's system. For the avoidance of doubt, the security of the Customer's telephone system is the sole responsibility of the Customer notwithstanding any work carried out on the system by TNBN employees or subcontractors.

(m) TNBN shall not be liable for any costs, or consequential losses or consequential costs resulting from the Customer's inability to perform pre-programmed tasks (for example analysis of call logging records) following work carried out by TNBN. Whilst TNBN will endeavour to minimise disruption to the Customer, the Customer acknowledges that it is solely responsible for such programming and re-programming, and checking that programmes have not been affected by any work carried out on the Equipment.

7. LIABILITY AND INDEMNITY

(a) TNBN will indemnify the Customer:

i. against liability for personal injury or death directly attributable to the negligence of TNBN in the performance of this Agreement; and

ii. against physical damage (but not loss of any data or other consequential loss) caused to the Customer's tangible property directly arising from the negligence of TNBN in connection with TNBN's maintenance of the Equipment. The Customer agrees to afford TNBN not less than 30 days in which to remedy any default under this Clause 7 (a) (ii).

(b) TNBN's total liability, other than that referred to in Clause 7(a)(i), to the Customer under the indemnities contained in this Clause 7 shall not exceed the Annual Maintenance Charge for one or more related claims arising in any one twelve month period.

(c) Except for Clause 7(a) (i) and (ii) and subject to the provisions of this Clause 7 TNBN shall not be liable to the Customer for any loss, expense or damage of any kind (direct, indirect or consequential and whether arising from negligence of otherwise) in connection with TNBN's maintenance of the Equipment or otherwise.

(d) The Customer acknowledges that the Annual Maintenance Charge reflects the limitations contained in this Clause 7. It is the Customer's responsibility to affect insurance cover in respect of all risks relating to the services of TNBN which are not covered by this Agreement or the liabilities accepted under this Clause 7.

(e) TNBN does not accept any responsibility for system faults caused by telephone area code changes, changes in carrier services or as a result of any legislative changes.

(f) TNBN accepts no liability for any claim relating to least cost routing programming.

8. ENGLISH LAW

(a) This Agreement shall in all respects be governed by English law. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts.

(b) The submission by the parties to such jurisdiction shall not limit the right of TNBN to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.

(c) Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party at the address specified in Part 1 or Part 2 as appropriate, or any alternative address notified to the other party in writing.

(d) In the event that the Customer is resident outside England any time limits in any proceedings shall not be extended by virtue only of the residence of the Customer.

(e) A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

9. GENERAL

(a) Construction

The construction of this Agreement is not to be affected by any heading. Reference to the plural shall include the singular and vice versa.

(b) Entire Agreement

This Agreement constitutes the entire agreement between the parties and there are no agreements or understandings between them other than those set out herein.

(c) Variation

Any variation to this Agreement shall only be binding if it is recorded in a document signed by an authorised representative of TNBN.

(d) Waiver

Failure by TNBN to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

(e) Any express or implied waiver by TNBN of any term or condition of this Agreement or of any breach or default by the Customer may be terminated by TNBN at any time. No such waiver shall constitute a continuing waiver nor shall it prevent TNBN from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Agreement.

(f) Force Majeure

TNBN shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control.

(g) Assignment and Transfer

The Customer may not assign the benefit of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of TNBN. TNBN may assign the benefits and obligations of this Agreement without the prior consent of the Customer.

(h) Agent

If a dealer/installer pays any part of this Agreement, he is acting as agent on behalf of the Customer.

(i) Data Protection Act

Personal data (as defined in the Data Protection Act 1998, or any amendment or re-enactment thereof) in respect of a Customer which is obtained consequent to this Agreement will be held on TNBN's computer system, and may be used by TNBN for the purposes of assessing the level of credit which should be extended to the Customer. The information may also be used for the future marketing of related products and services of TNBN or any of its associated companies unless the subject of the personal data gives TNBN notice in writing to the contrary.

(j) Intellectual Property Rights

The parties agree that any confidential know-how, copyrights, patents, trade secrets, inventions, trade marks and trade names and design rights used by TNBN in performing its obligations under this Agreement or arising in the course of performing its obligations hereunder are, and will remain, the property of TNBN (or the third party who has granted TNBN the right to use it) and nothing in this Agreement or TNBN's performance of it will be deemed to pass or transfer to the Customer any such intellectual