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## TALKWIRE MAINTENANCE TERMS AND CONDITIONS

Below are Talkwire's standard Service Support Terms and Conditions for general information purposes only and should not be considered a binding contract until signed by the 'Seller' and 'Customer'.

### **Section 1 - Glossary of Terms Used**

**Additional Services** means services in addition to the maintenance services, which the parties agree in writing and shall be covered by the scope of this agreement.

**Agreement** means these terms and conditions and the following Schedules and Annexes, which are attached to, and form part of this agreement.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open in London for normal business.

**Commencement Date** means the date of this agreement. Customer's IT Personnel means the person(s) notified by The Customer to the Supplier to act as the primary contact(s) within the customer in relation to the maintenance services.

**Confidential Information** means any Information which is disclosed by a disclosing party to a receiving party regarding this agreement, or to the disclosing party's Business, Operations, Technology, Customers, Plans and Marketing, other than any Non-Confidential Information.

**Disclosing Party** means the party disclosing any Information to the other party.

**Maintenance Charges** means the charges specified in this agreement which are payable by the customer to the supplier in respect of the maintenance services.

**Maintenance Period** means the maintenance services to be provided by the supplier in respect of the equipment as specified in the Schedule 1.

**Network Operator** means British Telecom or any other recognised Network Operator.

Non-Confidential Information means any item of Information which:

- 1) Is in the public domain at the date of its disclosure to the receiving party, or which thereafter enters the public domain through no fault of the receiving party.
- 2) Is already known to the receiving party at the time of its disclosure to the Receiving Party and is not subject to confidential restriction.
- 3) Following its disclosure by the disclosing party to the receiving party, is received by the receiving party without obligation of confidence from a third party whom the receiving party had no reason to believe was not lawfully in possession of such Information free of any obligation of confidence. Receiving party means the party receiving information from the

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other party. Service levels means the service levels specified in Schedule I. Service definition during the maintenance period, the company shall provide the customer with the maintenance services and any additional services in respect of the equipment in accordance with and to the service levels specified in Schedule 1.

### **Section 2 – Scope of Terms and Conditions**

These terms and conditions shall prevail over any proposed by the customer or implied by trade, custom, or practice and this agreement will only be concluded on that condition. The company's failure to object to any other terms proposed by the customer shall not be deemed a waiver of that condition.

### **Section 3 – Period that Terms & Condition will be Applied**

This agreement shall continue for the minimum term and then shall (except as otherwise provided by this agreement) automatically continue from year to year unless and until terminated by 90 days prior written notice given by either party to expire on any anniversary of this agreement.

### **Section 4 - Extent of Maintenance and Software Support Services**

- 1) Throughout the term of this agreement, the company shall maintain the system in efficient working order and shall provide the maintenance services subject to the provisions of Schedule 1 and these terms and conditions. The level of maintenance services shall be as specified on the face of this agreement.
- 2) Also within the terms of this agreement, the company will arrange where necessary, for the support of the software of the systems via an agreement with the manufacturer of the software until the manufacturer no longer supports the software.

### **The Maintenance Services does not include:**

- 1) Any alteration of the system to meet a change in the customer's requirements, the standards or requirements of the network operator or other relevant authority.
- 2) Any electrical or other work external to the systems, moving and re-installation of the system, or replacement of consumable material (including standby batteries and 50 volts power plants).
- 3) Any failure of line wiring after the first point of termination from the system through The Act of God, Governmental Act, War, Fire, Flood, Explosion, Civil Commotion or Industrial Dispute of a Third Party (a "Force Majeure Event"), during the period that the Force Majeure Event persists.
- 4) The cost of repair, replacement or extra service time made necessary by accidental damage, misuse, negligence or failure to observe the company's recommendations, those of the network operator, relevant authority or for causes external to the system such as,

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but not limited to failure or fluctuation of electrical power, air conditioning, or any third-party equipment of defect / failure in the relevant and public telecommunication network.

If after two years from the date on which the system is first accepted by the company for maintenance, the company reasonably forms the opinion that the systems can no longer be economically maintained to the necessary standards. It will notify the customer the estimated cost of rebuilding and reconditioning all or part of the system. Should the customer fail to make the systems available for rebuilding and reconditioning, or the parties fail to agree on the appropriate charges, the company shall be entitled to written notice to withdraw the maintenance services.

### **Section 5 - Software Support**

- 1) If the cause of a fault is determined as a software design problem, a patch fix or a software revision will be obtained from the manufacturers. If available, it will be installed, either by the maintenance engineer or by the manufacturer, as determined by the manufacturer.
- 2) Whenever the customer requires changes to the operational parameters of the system, a reconfiguration charge will be made.
- 3) If the customer requests additional features, modifications, additional hardware or additional interfaces not catered for by the existing software, the customer will be charged for the revised software issue.

### **Section 6 – Customer Responsibilities**

- 1) The customer is responsible for ensuring that the environmental conditions at the installation site (as approved by the company and / or the network operator, or other relevant authority, prior to installation) are always maintained.
- 2) The company's engineer shall have full, free and timely access to the system. To ensure remote access is available, the customer shall permit Talkwire to install software onto the customer network. The customer shall provide adequate working and storage space and other facilities the engineers may require which shall observe any common law statutory requirements relating to a healthy and safe place of work.
- 3) The customer shall indemnify The Company against all claims from the Network Operator and of other if The Company is unable to keep the System in good working order due to causes within the control of The Customer.
- 4) The Customer shall indemnify the company against all claims from the network operator and of other if the customer allows the system to be altered, adjusted or interfered with by anyone other than the company's engineers or agents, or the customers authorised personnel, or attachments are fitted without the company's approval.

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### **Section 7 – Limitations**

Neither party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause or causes beyond its reasonable control, including, without limitation, any of the following: The Act of God, Governmental Act, War, Fire, Flood, Explosion, Civil Commotion or Industrial Dispute of a Third Party (a “Force Majeure Event”), during the period that the Force Majeure Event persists; provided that:

- 1) The party so delaying (the “affected party”) promptly notifies the other party in writing of the reason for the delay and the likely duration of the delay (the “Force Majeure Notice”).
- 2) The affected party uses all reasonable efforts to mitigate the impact of the Force Majeure Event, on its ability to perform its obligations. If a Force Majeure Event persists for longer than 30 calendar days after delivery of the relevant Force Majeure Notice, and performance of the affected party’s obligations continues to be delayed or prevented, the other party may terminate this agreement by notice in writing to the affected party.
- 3) In the case of damage to property caused by the negligence of the company or its employees about the maintenance service, the liability of the company shall be limited to £5,000,000 in respect of any event(s) arising from a common cause.

### **Section 8 – Warranty**

- 1) The company warrants that it will exercise all reasonable care and skill in the provision of maintenance services however, the parties agree that the effect of any failure on the company’s part to provide maintenance services promptly and efficiently will be difficult to quantify and that the company cannot have knowledge of the consequences of such failure. Accordingly, the company’s liability to the customer for damages from any failure to provide the maintenance Services promptly, efficiently, or at all, shall be limited to the greater of £5,000, or one year’s maintenance charges for the system at the company’s then current rate.
- 2) In no event (whether this agreement continues in force or not) shall the company be liable for any loss of contracts, profits, business or use of the system, nor for any other indirect or consequential loss whatsoever attributable to from factors beyond the company’s control.
- 3) All other expressed or implied terms, conditions or warranties and any liability in tort (other than for negligence of the company, it’s servants, agents, or sub-contractors, causing death or personal injury) and, if exceeding the limit that is specified in Section 5, damage to property, are excluded.

### **Section 9 – Payment of Maintenance Charges**

- 1) The initial charge for the maintenance service (maintenance charge) shall be as specified on the face of this agreement. The maintenance charge shall be payable in advance. This agreement shall not commence until payment has been received by the company.

- 2) Any additional payment that may become due during the period covered by the maintenance charge shall be payable within 28 days of the date of the company's invoice.) Should the customer have a dispute with the invoice, they will notify the company within 10 working days of receiving the invoice.
- 3) The company shall be under no obligation to provide the maintenance services so long as any sum due is in arrears for more than 15 days. Any additional charges incurred by the consequent delay in carrying out the maintenance service shall be paid by the customer.

### **Section 10 – Annual Review**

The Company may at any time following the first anniversary date of this agreement and upon 60 days prior written notice to the customer, adjust the maintenance charge. Such adjustments shall not be made at intervals more frequently than one in any 12-month period. The maintenance charge will be adjusted by a rate not exceeding the variance indicated by the BEAMA Indices for Electrical Engineering during the 12-month period prior to the review.

### **Section 11 – Conditions**

- 1) The Company reserves the right to make a charge for the time and expenses incurred by its personnel being called out due to faults not on the system (e.g. the Network Operator line faults, power supply fluctuations etc.) or if the system is reported as faulty and proves not to be so, or the engineer is unable to obtain access to the system.
- 2) In addition to the maintenance charge, the customer shall pay to the company all additional charges for maintaining the system where maintenance is due to any circumstance other than normal wear and tear.
- 3) The company reserves the right to make a charge for the time and expenses incurred by its personnel being called out due to faults that could have been rectified remotely, but the customer has not provided the necessary connection to allow them to do so.

### **Section 12 – Confidentiality**

The receiving party may use the confidential Information only for the purposes of performing its obligations under this agreement.

The receiving party may disclose confidential information if required by the Competent Authority, provided that:

- 1) The Receiving Party takes such steps as are reasonably necessary and available in the circumstances to maintain the confidentiality of the Confidential Information by the Competent Authority.
- 2) The receiving party provides the disclosing party with prompt written notice of any request or requirement of disclosure made by a Competent Authority, and provides reasonable cooperation to the disclosing party in any action to obtain a protective order or other appropriate remedy.

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- 3) The receiving party may disclose the confidential Information to any designated person who has executed a confidentiality undertaking which imposes confidentiality obligations which are materially equivalent to those contained in this agreement and has been made for the benefit of and is enforceable at the instance of each party. The receiving party shall take all reasonable measures available to it, and in any event not less than those used to protect its own confidential information to keep the confidential Information in the strictest confidence.

Upon the expiry or earlier termination of this agreement, the receiving party shall, within 14) calendar days):

- 1) Return to the disclosing party, or destroy, all confidential Information disclosed to it, including whole or partial copies and any derivatives or translations in any media: and
- 2) Deliver written certification by an officer of the receiving party to the disclosing party, that all the confidential Information which has not been returned, has been securely destroyed.
- 3) If the receiving party breaches the confidentiality provisions of this agreement, the receiving party shall indemnify and save harmless the disclosing party and it's Indemnified from and against all claims, actions, suits, liabilities, losses, damages, costs, charges, expenses, legal fees and disbursements, fines and penalties to which they may be exposed, directly or indirectly, in consequence of such breach. This sub-clause (3) is for the benefit of and maybe enforced directly by each of the Indemnified: provided, however, that the consent of the Indemnified shall not be required to affect an amendment to this agreement which is agreed by the parties in accordance with any other provision of this agreement.
- 4) The parties acknowledge that the disclosing party would suffer irreparable harm because of a breach of the foregoing confidentiality provisions, and that legal remedies would be inadequate. Therefore, the parties agree that, in addition to any legal remedies to which the disclosing party may be entitled because of any such breach, the disclosing party may obtain an order from a court of competent jurisdiction restraining the receiving party from breaching or continuing to breach such provisions.
- 5) The foregoing confidentiality obligations shall survive the expiry or earlier termination of this agreement and continue the earlier of such time as the confidential Information has become non-confidential Information or the expiration of 5 years from the date of expiry or earlier termination of this agreement.

### **Section 13 - Customer Right to Cancel the Agreement**

If the company's maintenance services fail to conform to the published performance standards for any of its service level options, the customer must inform the company of the area(s) of concern in writing. The company will then arrange a site meeting with the customer at a time and date mutually agreeable. At this meeting, all problems will be identified and minutes catalogued. Action points will be allocated to each problem area. the company will then be given 60 days to rectify the problems that are its responsibility to clear, under the terms of this agreement, and formally handed over to the company at the site meeting. If, after this time, the customer can prove that the

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same problems still exist, they have the right to give the company 30 days written notification of cancellation of this agreement and the company shall reimburse on a monthly pro-rata basis any sums paid in advance.

### **Section 14 – VAT**

The Maintenance charge and other sums payable in the agreement do not include value added tax, and accordingly, they will be increased by the gross amount of value added and/or such other taxes as may be chargeable on the supply of equipment and services from time to time.

### **Section 15 – Default & Termination**

If the customer commits any breach of this agreement or any other agreement with the company and fails to remedy it promptly on receiving written notice from the company, or suffers distress, execution, commits an act of bankruptcy, goes into liquidation (except for amalgamation or reconstruction), if it enters into an arrangement or composition with creditors, if a receiver is appointed over any part of the customer's business, or in the case of a partnership any of the partners is declared bankrupt, it shall constitute a repudiation by the customer of its obligation under this agreement. At any time thereafter, the company may, (in addition to any other rights or remedies in law and, notwithstanding that, the company may have waived its rights under this condition on some previous occasion) by written notice, suspend performance of, or terminate the maintenance service.

### **Section 16 – Legal Construction**

This agreement shall be governed by English Law and will be subject to the jurisdiction of the English Courts. The legal construction of these conditions shall not be affected by their headings.

### **Section 17 – Invalidity**

If provision of this Agreement becomes invalid, illegal or unenforceable, the other provision of this Agreement shall not be affected thereby.

### **Section 18 – Entire Agreement**

This agreement with the schedule sets forth the complete agreement between the parties. No amendment or modification to this agreement will be effective or binding unless it is in writing and signed by duly authorised representatives of the parties.

If you have any queries regarding our Talkwire Maintenance Terms and Conditions, please contact us on 01225 899861 where one of our sales representatives will be able to assist you.