

## Terms and Conditions

BETWEEN Ocean Telecom UK Ltd of M033, Mile Oak Industrial Estate, SY10 8GA, or its successor and the party named in the Services Schedule (the “Customer”)

### 1. Contract definitions

In this agreement the following definitions apply:

“Agreement” means these terms and conditions and the Services Schedule;

“Services” means one or more of the following Support Services that have been elected by the Customer in the Services Schedule:

- (a) Telephone & Remote Support
- (b) Server Monitoring
- (c) Planned Maintenance Visits
- (d) Unplanned On-site Visits
- (e) On-Line Backup

Service levels – as agreed by Ocean and the customer.

“Services Schedule” means the document setting out the Service Level and System Support Fee, and referring to these terms and conditions and signed by the Customer;

“Support Agreement Fees” means the charges payable for the provision of Services, set out in the Services Schedule, which may be varied from time to time in accordance with clause 4;

“Planned Maintenance Visit” means a maintenance visit agreed in advance by the customer and Ocean Telecom that requires a visit by Ocean Telecom to the location in the Services Schedule for the purpose of carrying out planned preventative maintenance and resolving reported support problems. Details of the actual work to be carried out are at Ocean Telecom’s discretion and Ocean Telecom reserves the right to charge for any additional work undertaken as a result of customer instruction.

“Unplanned on-site visit” means a support issue raised by the Customer that requires a visit by Ocean Telecom to the location in the Services Schedule outside of planned maintenance visits.

“Non-critical” means a minor problem not of major inconvenience to users or business operation.

“Important non-critical” means a problem affecting multiple users and/or systems that causes inconvenience and/or loss of business efficiency.

“Business critical” means a major problem that is preventing part or all of the business from operating and/or causing significant financial loss.

### 2. Contract Term

2.1 This Agreement will take effect upon the commencement date as specified upon the Services Schedule. The contract will last for a period of six months unless specified the contrary on the Services Schedule. The contract will then be automatically renewed for a further twelve months unless either party gives at least one month’s notice in writing of its intention to terminate the contract.

### 3. Termination

3.1 Either party shall have the right to terminate this agreement immediately by notice in writing if:

- (a) There is a material breach by the other party of any of its obligations under this agreement and if the breach is capable of remedy, the party fails to remedy it within 30 days of written notice from the other party, requiring such remedy;

(b) Either party enters into liquidation whether compulsorily or voluntarily (other than for the purpose of a reconstruction) or compounds with its creditors or the other party becomes bankrupt or suffers any similar action in consequence of insolvency; or

(c) A receiver or administrator is appointed over the undertakings or assets of the other party.

3.2 Upon the termination of this agreement, all fees due to Ocean Telecom, up to and including those due in the date of termination shall be paid by the Customer within 10 days of such termination.

3.3 Subject to payment by the Customer of all outstanding fees, Ocean Telecom shall, within 10 days of termination of this agreement, deliver to the Customer all work in the course of completion.

3.4 The Customer shall, within 10 days of termination of this agreement, return to Ocean Telecom or if requested, by Ocean Telecom, give Ocean Telecom access to the Location to collect all materials, documents, equipment, software and data belonging to Ocean Telecom.

#### **4. Charges**

4.1 The charges for the support services are those indicated on the Services Schedule.

4.2 The Support Agreement Fees and Additional Charges are exclusive of VAT. The Customer shall pay to Ocean Telecom all applicable VAT and other similar taxes, duties or levies imposed on charges for the Services or any supplies made by Ocean Telecom under this agreement at the then prevailing rate.

4.3 The Telephone and Remote Access Support Fee is inclusive of all time and telephone charges in connection with providing remote support only, planned maintenance visits and unplanned on-site visits are chargeable at Ocean Telecom's standard rates.

4.4 The unplanned on-site visit is inclusive of labour charges, travel and subsistence incurred by Ocean Telecom in providing On Site Support for the contracted number of visits, but excludes the cost of any parts required for the repair of equipment and any amounts payable to the manufacturer or supplier of equipment.

4.5 Additional unplanned on-site visits must be purchased when the contracted number of visits has been used. Failure to pre-purchase additional unplanned on-site visits will reduce the support to "Telephone support" or "Telephone and Remote Access support" only for the remainder of the contract or until further unplanned on-site visits are purchased.

4.6 The On-site Support Fee is inclusive of labour charges, travel and subsistence incurred by Ocean Telecom in providing On-Site Support.

4.7 Charges for the support services will be reviewed annually, with two month's prior notice given before renewal is due.

4.8 Ocean Telecom may charge interest on all outstanding amounts at a rate of 4% per cent per annum above the base rate from time to time of Ocean Telecom's bank.

4.9 Ocean Telecom reserves the right to suspend all contractual obligations in the event of payment not being received within 30 days of date of invoice.

#### **5. Services and Conditions**

5.1 In consideration of the Customer's payment of the Support Agreement Fee, Ocean Telecom agrees to provide the Services elected by the Customer in the Services Schedule, at the location specified (the "Location").

5.2 Services to be supplied by Ocean Telecom under this agreement do not include:

(a) The correction of faults attributable to:

(i) incorrect use or treatment or damage caused other than by fair wear and tear

(ii) repairs maintenance or modifications carried out by anyone other than the company's

personnel

(iii) damage caused by relocation of equipment

(iv) unusual shock or electrical damage, accident, fire or water damage, neglect, air conditioning failure, humidity control failure, corrosive atmosphere or causes other than ordinary use

(v) failure by the customer to maintain the site specification as recommended by the manufacturer

(b) the recovery or replacement of lost data;

5.3 Ocean Telecom will provide Support Cover during the hours specified on the Services Schedule

5.4 The Response Time will be as indicated on the Services Schedule, and is measured with respect to coverage hours and priority level of problem.

5.5 If for any reason Ocean Telecom cannot effect resolution or repair of a problem within a reasonable time then loan or hire equipment may be offered as a temporary alternative.

5.6 If requested by the Customer, Ocean Telecom may at its absolute discretion agree to perform services in addition to the Services ("Additional Services") for a further charge ("Additional Charge").

5.7 If access to the Location to service an unplanned on-site visit is not available, or is curtailed before completion of the visit, Ocean Telecom may charge all reasonable extra costs incurred as a result of the lack of access or curtailment.

5.8 Acceptance by the Customer of any Services or Additional Services is prime facie proof of acceptance of the terms of this agreement.

## 6. Support Call Procedure

6.1 When a fault occurs, the Customer's staff shall contact Ocean Telecom using either our regular office number or the published helpline number. An Ocean Telecom representative or an answering service may answer the telephone. If a call is answered by an answering service there will be details of an alternative contact number. Ocean Telecom will use all reasonable endeavours to ensure that an Ocean Telecom representative can be contacted by whatever means and start diagnosis of a fault within the times specified on the Services Schedule. Once an Ocean Telecom representative is contacted the following procedure will then be adopted by the parties:

(a) The Customer will notify Ocean Telecom and supply all information necessary for Ocean Telecom to make an initial diagnosis;

(b) Ocean Telecom will, as soon as reasonably practicable use its best endeavours to diagnose and take one or more of the following actions, as it considers appropriate having regard to the type and urgency of the fault:

i) Provide oral advice to resolve the fault;

(ii) Connect via Remote Access to resolve the fault

(iii) Arrange for a site visit by a technician or engineer in accordance with the Response Time applicable to the equipment as set out in the Services Schedule.

(iv) Contact the manufacturer of any faulty Equipment.

6.2 Ocean Telecom may service the Support Call by remote access, attendance of Ocean Telecom's staff at the Location or any other reasonable means that Ocean Telecom considers appropriate for the level of Service.

6.3 If the Service includes remote access:

(a) Initial diagnosis may take place remotely

(b) The Customer shall install and maintain appropriate facilities to allow remote access (via

PSTN modem or other similar equipment, approved by Ocean Telecom) to the supported system

(c) The Customer shall maintain all such remote access equipment and all telephone connections and shall not disconnect the facilities or otherwise impede or prevent such remote access at any time

6.4 Ocean Telecom will endeavour to resolve a support visit and return any faulty equipment to working order before leaving site and shall remain on-site to effect such a repair assuming reasonable progress is being made.

6.5 The Support Call Procedure may be modified by Ocean Telecom at any time by providing prior written notice to the Customer.

6.6 Ocean Telecom will use its reasonable endeavours to comply with its obligations within the agreed time limits, in accordance with the Service to be provided.

6.7 If Ocean Telecom receives requests for assistance, which Ocean Telecom at its discretion considers excessive, Ocean Telecom may charge the Customer an Additional Charge.

## **7. Equipment and Parts**

7.1 Where Ocean Telecom diagnoses that the fault is in connection with the Equipment, and replacement parts and/or manufacturer support is required, Ocean Telecom will do one or both of the following:

(a) Provide parts either from Ocean Telecom's stock or from the manufacturer or supplier, provided that the Customer will pay to Ocean Telecom all costs, charges and expenses for the provision of the parts, except where the cost of parts is specifically included in the Services Schedule.

(b) Contact the manufacturer of the Equipment and notify them (or their authorized representative) of the fault, on the Customer's behalf, and arrange for the rectification of the Equipment Fault provided that the Customer will pay to Ocean Telecom all costs, charges and expenses charged by the manufacturer for that rectification (save when the Equipment is repaired under manufacturers warranty) and/or any carriage costs incurred in the return of the Equipment to the manufacturer, except where the cost of such manufacturer's repairs is specifically included in the Services Schedule.

7.2 The Customer authorizes Ocean Telecom to acquire (or supply from its own stock) parts on the Customer's behalf, at the Customer's expense. Prior to obtaining parts costing in excess of any cap identified in the Services Schedule, Ocean Telecom shall obtain the Customer's written authorization.

## **8. Obligations of the Customer**

8.1 The Customer shall:

(a) Ensure that all cables and fittings associated with the Equipment and the electricity supply to the Equipment are maintained in good operating condition;

(b) Not alter, amend, reconfigure or in anyway change the equipment;

(c) Free of charge, provide all reasonable assistance to Ocean Telecom;

(d) Allow Ocean Telecom to make and remove copies of the software or any data in use by the Customer for the purpose of support only;

(e) Ensure that the Location complies with all applicable legislation and regulations on health and safety.

(f) Ensure that the Equipment is maintained in an operating environment compliant with the terms of any manufacturer's warranty including, without limitation, electrical supply, operating temperature, cleanliness, humidity, electrostatic charges and radiation.

8.2 If requested by Ocean Telecom, the Customer shall sign a completion statement, on each

occasion that the Service is requested, confirming that the Service, or part of it, has been carried out in accordance with this agreement.

## 9. Warranty

9.1 Subject to clause 7, Ocean Telecom warrants that the Services carried out by them will be carried out with reasonable care and skill and by means of appropriately skilled and qualified personnel.

9.2 If there is no express agreement on the time within which particular Services are to be provided then such Services shall be provided within a reasonable time.

9.3 Ocean Telecom undertakes to use all reasonable endeavours to remedy any faulty work performed by them arising from a breach of the warranty contained in clause 9.1 which is reported to Ocean Telecom in writing within 1 month after performance of such work. If Ocean Telecom rectifies the faulty work by the provision of further services, then Ocean Telecom will have no other liability of any kind in respect of the faulty work.

## 10. Limitations of Liability

10.1 The Customer acknowledges that Ocean Telecom's obligations and liabilities in respect of the Services are exhaustively defined in this agreement. The express obligations and warranties made by Ocean Telecom in this agreement are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this agreement including (without limitation) as to the condition, quality, performance, satisfactory quality or fitness for the purpose of the Services or any part thereof.

10.2 Ocean Telecom's liability:

- (a) For death or personal injury resulting from the negligence of Ocean Telecom or that of its servants or agents; or
- (b) In relation to any other liability which may not by applicable law be excluded or limited;
- (c) Is not excluded or limited.

10.3 Subject to sub-clauses 10.1 and 10.2, Ocean Telecom's liability under or in relation to this agreement (whether for negligence, breach of contract or otherwise) shall be limited as follows:

- (a) For physical damage to tangible property (excluding the Equipment), to the sum of £5,000,000;
- (b) For all other loss or damage to an amount equal to the annual charge (excluding VAT) for maintenance under this agreement during the year in which the event occurred in respect of each event;
- (c) Provided that if more than one event results in substantially the same loss or damage then all such events shall be treated as one.

10.4 Subject to sub-clauses 10.1 and 10.2, Ocean Telecom accepts no liability under or in relation to this agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any: loss of profits; loss of sales; loss of turnover; loss of or damage to business; loss of or damage to reputation; loss of contracts; loss of customers; loss of, or loss of use of, any, software or data; loss of use of any computer or other equipment or plant; wasted management or other staff time; losses or liabilities under or in relation to any other contract; and indirect, special or consequential loss or damage. For the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

10.5 The Customer is responsible for the consequences of any use of the Services and shall

be solely responsible for the maintenance and security of its own software or data.

10.6 The Customer agrees that except as expressly provided in clauses 9 and 10, Ocean Telecom will not be under liability of any kind whatsoever and howsoever caused arising directly or indirectly in connection with this agreement.

10.7 The parties acknowledge and agree that the allocation of risk contained in this clause 10 is reflected in the Support Agreement Fee and is also a recognition of the fact that, inter alia, it is not within Ocean Telecom's control how and for what purpose the results of the Services are used by the Customer.

#### **11. Name\Director Changes**

The name of the company and/or directors of Ocean Telecom may change at any given time.

#### **12. General Terms**

11.1 The Customer will not during the term of this agreement and for a period of 6 months afterwards, without Ocean Telecom's prior written consent directly or indirectly solicit or offer employment to any Ocean Telecom employee who at any time during the 12 months period immediately preceding such action was directly involved in the provision of the Services.

11.2 Neither party shall be liable for any breach of this agreement which arises because of any circumstances which the party cannot reasonably be expected to control.

11.3 Non enforcement or delay in enforcing any rights under this agreement shall not be treated as a waiver of those rights by the party concerned.

11.4 Neither party may assign any rights or obligations under this agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

11.5 Ocean Telecom may appoint a sub-contractor to perform any of its obligations under this agreement without the consent of the Customer.

11.6 If any provision of this agreement is held to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this agreement or this agreement as a whole.

11. All notices, authorisations and consents under this agreement shall be in writing. Notices shall be sent to the address of the recipient set out in this agreement or in the Services Schedule or to such other address as either party shall notify to the other. Any notice will be treated as having been delivered:

(a) If sent by hand, when delivered;

(b) If by first class post, 48 hours after posting;

(c) If by airmail, 7 days after posting; or

(d) If by facsimile or email, when dispatched provided that a confirmatory copy is immediately dispatched by first class post or airmail.

11.8 This agreement sets out all of the terms that have been agreed between the parties in relation to the subjects covered by it. No other representations or terms shall apply or form part of this agreement. The parties confirm that they have not relied upon any representations when entering into this agreement.

11.9 This agreement is to be interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts

#### **13. Cooling off period.**

The customer has 7 days on signing of the contract in which to terminate the agreement by notifying the company in writing.

#### 14. **GDPR and PCI Compliance**

GDPR and PCI Compliance is not currently included within the standard IT Support contracts. These features are available subject to status at an additional cost.