

Maintenance Agreement

Terms and Conditions

1. Definitions

1.1 In these conditions:

Agreed Hours: means between 8:30 am and 5pm Mondays to Thursdays and 8:30am and 4:30pm Fridays, excluding weekends and public holidays or such other hours as the Supplier and Customer agree in writing (which will attract additional charges);

Commencement Date: means the date specified overleaf as the commencement date or if later the date that the Equipment is installed by the Supplier;

Customer: means the person named overleaf;

Equipment: means the equipment detailed overleaf and all internal cabling up to the network test termination point or other demarcation point;

Good Working Order: the Equipment operates in accordance with all operating manuals, specifications and other manufacturer documentation relating to the Equipment;

Initial Period: means, a period of seven years, or to co-incide with the term of the Rental Agreement;

Supplier: means FutureTel Ltd, a company registered in England and Wales with company number 08801027 whose registered office is at Unit 9 Westlink, Belbins Business Park, Romsey, Hampshire, SO51 7AA;

Supplier's Website: www.futuretel.co.uk

Maintenance Services: means the fault rectification service described in condition 4 below;

Renewal Period: each successive 12-month period after the Initial Period for which this Maintenance Agreement is renewed;

Rental Agreement: means an agreement entered into by the Customer pursuant to which the Customer hires the Equipment from the Supplier or a third party;

Additional Equipment: means any Equipment purchased after the initial Equipment Order from the Supplier and that the Supplier installs to work with the existing Equipment.

Response Time: means eight working hours if the Equipment has failed completely or 16 working hours if the Equipment has failed partially;

Term: the Initial Period together with all Renewal Periods;

Fair Usage: means, 24 or less requests for works in each annual period.

Previously Paid Termination Charges: means any termination or settlement charges paid by the Supplier on behalf of the Customer to the Customer's previous maintenance provider at any time before or after the Commencement Date.

2. **Supplier's Undertaking** In consideration of the payment by the Customer of the annual service charge in accordance with the terms of condition 3, the Supplier undertakes to provide the Maintenance Services in respect of the Equipment upon the terms and conditions of this Maintenance Agreement.

3. Maintenance Charges

3.1 The annual service charge for the Maintenance Service is payable annually in advance. Payment for services provided to the Customer in addition to the Maintenance Services is due on presentation of an invoice by the Supplier.

3.2 The Supplier reserves the right to submit invoices to the Customer via email.

3.3 Where payment is outstanding for more than 30 days in respect of any invoice due under this Maintenance Agreement, the Supplier may without liability, suspend its obligations under this Maintenance Agreement until payment of the overdue amount is made.

3.4 The Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4% per annum above the then current Bank of England base rate, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly or, at its discretion, a late payment fee of £35 plus VAT.

4. Maintenance Services

4.1 On the Customer informing the Supplier that the Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall use reasonable endeavours during the Agreed Hours;

4.1.1 To inspect, test and diagnose the fault (by attendance on site or remotely as the Supplier deems necessary) within the relevant Response Time; and

4.1.2 To carry out such repair, replacement or parts or adjustment as the Supplier shall deem necessary to remedy the said fault.

4.2 Maintenance Services will be carried out by duly qualified engineers.

4.3 The Response Time will commence from the time the Customer informs the Supplier in accordance with condition 4.1 provided that such notification is made to the Supplier during the Agreed Hours.

5. Excluded Maintenance

5.1 The Supplier is not obliged to perform any Maintenance Service required to restore any malfunctioning or failed Equipment to Good Working Order or suffer any liability in relation thereto where the malfunction or failure results from or is caused by any of the following ("Excluded Causes"):

5.1.1 Any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval; or

5.1.2 Faults in the service provided by the network provider; or

5.1.3 Defects in electricity or network supply to the Equipment; or

5.1.4 Defects caused by failures or surges of electrical power; or

5.1.5 Failure of the Equipment due to changes in the electrical supply service or the public network; or

5.1.6 A defect in the manufacturer's design of the Equipment; or

5.1.7 The Customer's broadband connection or the lack of any broadband connection, (where not provided by the Supplier).

5.1.8 Faulty materials or workmanship in the manufacture of the Equipment.

5.2 Where the Supplier is performing or has performed Maintenance Services in circumstances where it is established that the Equipment was not in Good Working Order due to any Excluded Causes, the Supplier may charge, and the Customer shall pay a fee, calculated in accordance with the Supplier's then current rates, in respect of that work.

6. Limitation of Liability

6.1 Except as expressly stated in this Maintenance Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

6.2 Subject always to condition 6.4, the Supplier shall not be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for a) any loss (whether direct or indirect) of profits, business, revenue or goodwill; b) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Maintenance Agreement.

6.3 Subject always to condition 6.4, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Maintenance Agreement shall be limited to £100,000.

6.4 The Supplier does not exclude or limit liability for fraud or fraudulent misrepresentation or death or personal injury caused by negligence.

6.5 The Supplier shall not be in breach of this Maintenance Agreement, nor liable for any delay in performing or failure to perform, any of its obligations under this Maintenance Agreement if that delay or failure results from circumstances due to a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or government action or where the Customer has failed to comply with its obligations hereunder.

7. **The Customer's Obligations** The Customer agrees that it will:-

7.1 Pay the Supplier all amounts due under this Maintenance Agreement at the due times;

7.2 Ensure that the Equipment is not moved at any time from the address and location at which it was originally installed, altered, adjusted or interfered with in any way except by the Supplier's employees or agents. Alterations include (but are not limited to) the reprogramming of the Equipment to change network providers for the purpose of least cost routing;

7.3 Provide the Supplier with full access to the Equipment during the Agreed Hours to enable maintenance of the Equipment to be carried out;

7.4 Notify the Supplier promptly if Equipment is discovered to be operating incorrectly;

7.5 Pay the Supplier's charges for reprogramming the Equipment required as a result of an error by any person other than the Supplier's employees or agents;

7.6 Take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Equipment;

7.7 Not alter or extend the Equipment without prior notification to the Supplier and permissions granted by the Supplier. An additional charge (at the Supplier's sole discretion) may be applied for the maintenance of altered equipment;

7.8 Provide the Supplier with details of the installer of the Equipment, a copy of its Pre-Connection Inspection Certificate and access to all relevant site records.

7.9 Reasonably request works under this contract and agrees where applicable, that any usage in excess of Fair Usage, could, at the Supplier's discretion, incur an additional charge pursuant to condition 8.2.

8.0 Additional Equipment

8.1 If at any time throughout the Term the Supplier agrees to provide the Customer with any Additional Equipment, any such Equipment will form part of the Equipment for the purposes of the Maintenance Agreement. The Supplier will;

8.1.1 Increase the annual service charge by an amount equal to 12% of the Equipment purchase cost;

8.1.2 The Term for the Additional Equipment will co-incide with the existing Initial Period;

8.2 If the Supplier deems the level of support being provided is not proportional to the relative charge pursuant to condition 3 whilst considering condition 7.9, then the Supplier will apply an appropriate increase to the annual service charge.

9. Term and Termination

9.1 The Maintenance Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with condition 9.2 shall remain in force for the Initial Period. The Term of the Maintenance Agreement shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 90 days written notice before the end of the Initial Period or the relevant Renewal Period, to terminate this Maintenance Agreement.

9.2 This Maintenance Agreement may be terminated:

9.2.1 By the Customer during the Initial Period by giving at least 90 days written notice to the Supplier expiring on an anniversary of the Commencement Date (any notice of termination of the Contract served by the Customer must be in writing, marked for the attention of the Managing Director of the Supplier and sent by recorded delivery); or

9.2.2 By the Supplier if the Customer is in breach of any provision of this Maintenance Agreement and does not rectify the breach within 14 days of the Supplier's notice of such breach; or

9.2.3 By the Supplier if the Customer becomes unable to pay its debts; within the meaning of the Insolvency Act 1986, enters into liquidation or administration or is subject to any other analogous insolvency proceeding.

9.3 On termination the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to this Maintenance Agreement.

9.4 Notwithstanding condition 9.3 in the event of termination:

9.4.1 Pursuant to condition 9.2.1 the Customer shall immediately pay the annual service charges in respect of the remainder of the Initial Period after the date of Termination;

9.4.2 Pursuant to condition 9.2.2 and/or 9.2.3 the Customer shall immediately pay such proportion of the annual service charges in respect of the remainder of the Initial Period after the date of termination as the Supplier calculates (acting reasonably) represents a genuine estimate of the loss suffered as a result of the breach. Such amount shall never exceed an amount equal to the service charges for the remainder of the Initial Period.

9.4.3 By the Customer pursuant to condition 9.2.1, or by the Supplier pursuant to condition 9.2.2 or 9.2.3 prior to the expiry of the Minimum Term, the Customer shall on demand in addition to its payment obligations in this condition 4, reimburse the Supplier the Previously Paid Termination Charges.

10. General

10.1 The terms of this Maintenance Agreement including the details overleaf, represent the entire agreement between the parties in relation to the maintenance of the Equipment during the Agreed Hours and no variation shall be binding unless signed by the director of the Supplier.

10.2 The terms of this Maintenance Agreement may be varied by the Supplier if the Supplier deems such variation to be necessary to comply with any statute, regulation or British Standards Institute Requirement.

10.3 The annual charge payable under this Maintenance Agreement shall be reviewed annually and will be increased by the Supplier by 5%.

10.4 The Supplier reserves the right to make a charge in accordance with its current rates if it erroneously notified of an Equipment fault on more than two occasions in any calendar month.

10.5 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.6 No delay or failure by the Supplier in enforcing any provision of this Maintenance Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Maintenance Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.

10.7 If any provision of this Maintenance Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Maintenance Agreement and the remainder of the provision in question shall not be affected.

10.8 The Supplier may assign its rights and obligations. The Customer may not assign its rights and obligations.

10.9 The Supplier may change the Terms of this Maintenance Agreement (including the charges) at any time. The Supplier will publish details online on the Supplier's Website at least two weeks before the change is to take place, thus giving the Customer reasonable notice of any variation before it takes place.

10.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall, subject as hereinafter provided, be governed by, and construed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. Where the Customer is (a) a limited company, or a limited liability partnership, with a registered office located in Scotland or (b) one or more individuals carrying an unlimited liability business (whether alone, in partnership or as part of a joint venture, or otherwise) having at least one place of business located in Scotland, then the Company (but not the Customer) may in its absolute discretion in relation to proceedings relating to the Contract brought by it against the Customer (or against it by the Customer), elect that the parties shall submit to the jurisdiction of the Scottish Courts. Such an election by the Company shall (a) be exercised by the Company no later than immediately prior to commencement by it of proceedings against the Customer or (as the case may be) within a reasonable time of it being notified by the Customer or the Customer's intention to bring proceedings against the Company, (b) be irrevocable, (c) not affect the application of English law and (d) bind the parties only in relation to the proceedings in relation to which the Company exercised its election and shall not bind the Company in relation to other proceedings between the parties that may occur at any time thereafter.