

1. General

- 1.1 The terms and conditions in this contract are the sole terms and conditions of the contract between Overline Network Consultants Limited and the Customer. No variation or modification of these terms of conditions and no agreement made, or purported to be made, between Overline Network Consultants and the Customer inconsistent with these terms and conditions shall be valid, or of any affect, unless made in writing and signed by a director of Overline Network Consultants.
- 1.2 No alteration to the equipment i.e. increase/decrease in configuration, modification or re-installation to another site, can be carried out by engineers other than Overline Network Consultant's engineers, to which a reasonable market rate will be charged. Any unauthorised changes found will make the agreement invalid and charges due for the remaining period of the contract will be payable to Overline Network Consultants unless otherwise agreed in writing by a director of Overline Network Consultants.

2. Our Duties

- 2.1 You engage us and we agree to provide and carry out only at the installation address during the term the following maintenance services subject to the exclusions in Clause 5 using reasonable skill and care.
- 2.2 We will maintain or procure the maintenance of the equipment at the installation address shown overleaf in efficient working order during the term.
- 2.3 We will use all reasonable endeavours to arrive within 16 working hours, (being 9.00am - 5.00pm Monday to Friday excluding public holidays).
- 2.4 We do not maintain any 2 wire devices.

3. Your Duties

- 3.1 You shall at all times:
orally notify us immediately of any fault in the equipment and/or any repair necessary and then confirm your notification in writing and promptly provide us with any information which we reasonably require to enable us to proceed uninterrupted with the performance of this agreement.
- 3.2 Afford our staff and our other authorised personnel full and safe access to the installation address and the equipment to enable us to carry out the maintenance services.
- 3.3 Provide us with, and be responsible for, the safety of such adequate free working space and facilities as may be necessary for the performance of this agreement.
- 3.4 Comply with all statutory requirements (including those relating to health and safety) which apply to the maintenance services and institute safe systems of work at the installation address.
- 3.5 Promptly inform us about any facts or opinions of which you become aware which are likely affect our obligations under this agreement.
- 3.6 Keep the equipment at the installation address except as provided in clause 1.2, not yourself maintain, service, repair, adjust, tamper, replace, alter or
- 3.7 move the equipment or the extension wiring

4. Payment

- 4.1 The maintenance fee for the 1st year of the term shall be due on the commencement date, the second and subsequent maintenance fees shall be due on the first day of the month in which falls each anniversary of the commencement date or annually on a previously agreed payment date.
- 4.2 Payment on time is an essential condition of this agreement
- 4.3 Payments will be made to Overline Network Consultants no longer than fourteen days from invoice
- 4.4 We may (without prejudice to our other rights and remedies)
- 4.4.1 Date, where after an interest rate of 4% above Bank Of Scotland base rate will be charged until payment has been received. The interest will be payable on demand. Whilst outstanding payments are not received, Overline Network Consultants reserve the right to suspend the contract and not provide maintenance services.
- 4.4.2 Theft, loss of or destruction of or damage to the equipment shall not affect your obligations under this clause

5. Warranty and Liability

- 5.1 You acknowledge and agree that:
- 5.1.1 You are in a better position than we are to foresee and evaluate any potential damage or loss that you may suffer in connection with the maintenance Services or any other service provided by us under this agreement; and
- 5.1.2 The maintenance fee has been calculated on the basis that we will exclude or limit our liability as set out in clauses 5.2 and 5.4
- 5.2 Our total liability to you, whether directly to you by reason of indemnity or contribution in respect of your liability to any third party, for any negligent acts or omissions of our employees, agents or subcontractors:
- 5.2.1 Resulting in damage to property shall be limited to £1 million
- 5.2.2 In respect of fraud or dishonesty shall be limited to the return to you of up to the maintenance fee paid pro-rata to the date of the offence. These limits shall apply separately to each and every claim against us provided that where any one act or emission or series of two or more connected acts or emissions gives rise to more than one claim, the limits shall apply to the aggregate of all the claims as though they were a single claim
- 5.3 We do not limit or exclude our liability for death or personal injury caused by the negligence of our employees, agents, or subcontractors.
- 5.4 Notwithstanding anything else contained in this agreement, we shall not be liable to you for:
- 5.4.1 Any failure of the equipment due to:
- 5.4.1.1 Use not in accordance with manufacturer's instructions, unauthorised repair, or use of accessories.
- 5.4.1.2 Foreign bodies, negligent use, wilful abuse or misuse
- 5.4.1.3 Fire, flood, lightning, theft vandalism or act of God.
- 5.4.1.4 Any delay in the execution of any work of installation, replacement, alteration, removal or otherwise of, or, to the equipment, however so caused and any such delay shall not be sufficient cause of cancellation of this contract.
- 5.4.1.5 Any failure or defective working of the equipment due to any fault or failure or change in the electricity supply service and/or BT or any other service providers equipment and/or host PBX systems.
- 5.4.1.6 To repair, or be responsible for, any damage caused by the failure of electrical supply to the equipment.
- 5.4.1.7 In respect of accidental damage to the equipment or your property
- 5.4.1.8 Economic loss including, but not limited to, loss of profits, revenues or goodwill (including any such loss or damage payable to you to a third party as a result of an action brought by a third party); or
- 5.4.1.9 Any other indirect or consequential loss (including any such loss or damage payable by you to a third party as a result of an action brought by a third party) even if the loss in 5.4.8 and/or 5.4.9 was reasonably foreseeable or we had been advised of the possibility of you incurring it and whether arising from negligence, breach of contract or of statutory duty or otherwise; or
- 5.4.2.0 any claims which have not been notified to us within 30 days of the date on which you knew, or should have known, of the claim's existence.
- 5.5 The express terms of this agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

6. Termination

- 6.1.1.1 Any other indirect or consequential loss (including any such loss or damage payable by you to a third party as a result of an action brought by a third party) even if the loss in 5.4.8 and/or 5.4.9 was reasonably foreseeable or we had been advised of the possibility of you incurring it and whether arising from negligence, breach of contract or of statutory duty or otherwise; or
- 5.5.2.0 any claims which have not been notified to us within 30 days of the date on which you knew, or should have known, of the claim's existence.
- 5.6 The express terms of this agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

7. Termination

- 7.1 This agreement may be terminated:
- 7.1.1 By the customer if the total monies due for the total period of the contract, or if a negotiated settlement is made between Overline Network Consultants and the Customer.
- 7.1.2 By us giving you 30 days notice and refunding the balance of any maintenance fee, if already paid.
- 7.1.3 Immediately by either party on giving notice in writing to the other if the other:
- 7.1.3.1 being a company has a receiver or administrative receiver appointed, passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order, enters into any voluntary arrangement with your creditors or ceases or threatens to cease to carry on business;
- 7.1.3.2 being a partnership (and whether in respect of the partnership or of any one or more of the partners) or an individual (I) is involved in any legal proceedings involving its solvency, (ii) commits an act of bankruptcy or is adjudicated bankrupt or (iii) enters into any composition or other arrangement with its creditors generally (or any class of them) or (iv) has proposals submitted for an individual voluntary arrangement or (v) has a receiver, administrative receiver or other creditors' representative appointed over any of its assets or property or (vi) ceases or threatens to cease to carry on business;
- 7.1.3.3 fails to pay on its due date any sum due under this agreement;
- 7.1.3.4 commits any material breach of any term of this agreement (other than under clause 6.1.3.3) which, in the case of a breach capable of being remedied, is not remedied within 14 days of a written request to do so.
- 7.2 A termination under clause 6.1 shall discharge us from liability for further performance of this agreement and shall entitle us to enter the installation address or any of your premises and recover any equipment and materials which are our property (and so that you irrevocably license us, our employees and agents to enter the installation address or premises for that purpose).
- 7.3 Termination of this agreement shall not affect any accrued rights or liabilities of either party or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force or on after termination.

8. Force Majeure

- 8.1 We shall have no liability to you, or be deemed to be in breach of this agreement, as consequence of any of the following events:
- 8.1.1 flood, storm, severe weather conditions or other natural event;
- 8.1.2 war, terrorist action, hostilities, revolution, riot or civil disorder;
- 8.1.3 any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, or materials (including any computer hardware or software or any records);
- 8.1.4 the introduction of, or any amendment to, a law or regulation, or any change in your interpretation or application by any authority;
- 8.1.5 any strike, lockout or other industrial action;
- 8.1.6 any obstruction of any public or private highway or road or any event which prevents or obstructs access to the site;
- 8.1.7 any breach of contract or default by, or insolvency of, a third party (including any agent or sub-contractor);
- 8.1.8 any other event outside our reasonable control, whether similar or not to any of the foregoing.

9. Invalidity and Severability

- 9.1 In any provision of this agreement is found by any court of administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

10. Waiver

- 10.1 No delay or indulgence by either party in enforcing this agreement shall prejudice or restrict the rights of that party. A waiver of your right shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, powers and remedies shall be cumulative

11. Warranty

- 11.1 You warrant to us that you have not been induced to enter into this agreement by any prior representations whether oral or in writing, except as specifically contained in this agreement, and you waive any claim for breach of prior representations.

12. Assignment

- 12.1 You shall not transfer this agreement or any of your rights and obligations under it, whether in whole or in part, without first obtaining our prior written consent.

12. Notices

- 12 All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the recipient set out in this agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

13. Headings

- 13.1 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this agreement

14. Law

- 14.1 This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts