



TERMS AND CONDITIONS FOR MAINTENANCE SUPPORT

Definitions

CONTINUITY ASSURED shall mean CONTINUITY ASSURED Ltd. and their authorised agents

Customer shall mean the person, firm or company purchasing or agreeing to the purchase of goods or services from CONTINUITY ASSURED

Request for Maintenance Service shall mean the time at which CONTINUITY ASSURED receives an accurate description of a fault.

A Major Fault shall mean the Total failure of the system or the inability to make any outbound or receive any inbound calls. A Minor fault shall mean any other covered fault – See Exclusions (section 3)

1. Effect

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 CONTINUITY ASSURED failure to object to any other terms proposed by the Customer shall not be deemed a waiver of that condition.

2. Term

This agreement shall continue for the initial minimum term of twelve months and then shall (except as otherwise provided by this agreement) automatically continue from year to year unless and until terminated by a minimum of forty two days prior written notice given by either party.

3. Extent of Maintenance Support Services

3.1 Throughout the term of this Agreement CONTINUITY ASSURED shall maintain the system in efficient working order and shall provide the Maintenance Support Service ("the Maintenance Service") listed in the section titled "levels of cover" subject to the provisions of that section and these term and conditions. The system shall be defined as the schedule of equipment documented in the Equipment Maintenance Agreement.

3.2 The Maintenance Service does not include:

(a) any alteration of the System to meet change in the Customer's requirements or the standard or Requirements of British Telecom or other relevant public network operators ("the Network Operator") or other relevant authority.

(b) any electrical or other work external to the System, moving and re-installation of the System, or replacement of consumable materials.

(c) the cost of repair or replacement or extra service time made necessary by accidental damage, misuse, negligence or failure to observe CONTINUITY ASSURED recommendations or those of the Network Operator or other relevant public authority or for causes external to the System such as, but not limited to, failure or fluctuation of electrical power or air conditioning or any defect or failure in relevant public telecommunications network.



(d) modifications or reconfigurations necessary to enable multi-tenant use of the System.

(e) any failure of the line wiring (where included as part of the System) other than by reason of fair wear and tear.

(f) any equipment not comprised the Equipment listed in the Equipment Schedule. CONTINUITY ASSURED reserves the right to charge the Customer for any such services and costs.

3.3 If, after seven years from the date on which the System is ready for service, CONTINUITY ASSURED reasonably forms the opinion that the System can no longer be economically maintained to the necessary high standards it will notify the Customer of CONTINUITY ASSURED estimate of the cost of rebuilding and reconditioning all or part of the System. Should the Customer fail to make the System available for rebuilding or reconditioning or the parties fail to agree on the appropriate charges, then CONTINUITY ASSURED shall be entitled by written notice to withdraw the Maintenance Service.

4. Customer's Responsibilities:

4.1 The Customer is responsible for

(a) ensuring that the environmental conditions at the site (as approved by CONTINUITY ASSURED and/or the Network Operator or other relevant authority from time to time) are maintained at all times.

(b) ensuring that CONTINUITY ASSURED engineers have full and free and timely access to the System and the Customer should provide adequate working and storage space, and such other facilities as the engineer may reasonably require and should observe any common law or statutory requirements relating to health and safe place of work.

4.2 The Customer shall maintain such records as are required by the terms of the Branch Systems License as issued from time to time by the Secretary of State and Industry and shall make record available to CONTINUITY ASSURED

4.3 The Customer shall indemnify CONTINUITY ASSURED against all claims from the Network Operator and of others in the event that

(a) The Customer allows the System to be altered, adjusted or interfered with by any other than a CONTINUITY ASSURED authorised engineers.

(b) CONTINUITY ASSURED is unable to keep the System in good working order due to causes within the control of the Customer.

5. Limitations

5.1 Unless otherwise agreed in writing by CONTINUITY ASSURED the System must not in any circumstances be altered, adjusted or interfered with except by CONTINUITY ASSURED authorised engineers.

5.2 CONTINUITY ASSURED will not be liable for the failure to provide the Maintenance Service if this results from any "force majeure" event (whether happening in the United Kingdom or elsewhere), such as but not limited to Act of God, refusal of license or other governmental act, fire, explosion, accident, lighting damage, electromagnetic interference, industrial dispute, difficulty in obtaining materials or any cause beyond its reasonable control.

6. Warranty

CONTINUITY ASSURED Ltd. The Springboard Centre, Mantle Lane , Coalville, Leicestershire. LE67 3DW (Reg No. 06634451)
Tel: 08008 40 41 42 Fax: 0844 375 573 1 www.continuityassured.co.uk



6.1 CONTINUITY ASSURED warrants that it will exercise all reasonable care and skill in the provision of the Maintenance Service. However, the parties agree that the effects of any failure on CONTINUITY ASSURED's part to provide Maintenance Service promptly and efficiently will be difficult to quantify and that CONTINUITY ASSURED cannot have knowledge of the consequences of such failure.

6.2 in no event (whether this agreement continues in force or not) shall CONTINUITY ASSURED be liable for any loss of contracts, profits, business or use of the System nor for any other indirect or consequential loss whatsoever attributed to delay or failure to provide the Maintenance Service.

6.3 All other express or implied terms conditions of warranties and any liability in tort (other than for negligence of CONTINUITY ASSURED, its servants, agents or subcontractors causing death or personal injury).

7. Payment of Maintenance Charges

7.1 The initial charge for the Maintenance Service ("the Maintenance Charge") shall be specified in Equipment Maintenance Agreement. The Maintenance Charge shall be payable either annually in advance or by 12 monthly payments. In either case the contract is for 1 year and any agreement by CONTINUITY ASSURED to accept monthly payments of the Annual Fee, does not imply that the agreement is a monthly contract. As such in all circumstances all 12 monthly payments must be made in their entirety. At the sole discretion of CONTINUITY ASSURED, cover may be withheld until all such late or missing payments are made. Any late payments will be dealt with in accordance with section 13 of these terms and conditions..

7.2 Any additional payment which may become due during the period covered by the Maintenance Charge shall be payable in accordance with the due date specified in the relevant CONTINUITY ASSURED invoice.

8. Adjustment

The Maintenance charge may be adjusted at any time in the event that

(i) The class of Maintenance Service provided for the System is changed for any reason by mutual agreement.

(ii) Any changes are made to the requirements of the Network Operator affecting the provision of the maintenance Service for the System.

(iii) Revised software is installed in the System at the request of the Customer.

(iv) The software installed in the System is no longer a current release and the Customer refuses to purchase an upgrade known to rectify a fault.

(v) The System is extended by the addition of further hardware or software. In this event the Maintenance Charge shall be increased by the rate applied by CONTINUITY ASSURED at the relevant time for the Maintenance of the additional hardware or software.



9. Annual review

In addition to any adjustment made to the Maintenance Charge pursuant to Clause 8, CONTINUITY ASSURED may at any time following the first anniversary date of this agreement adjust the Maintenance Charge. Such adjustments shall not be made at intervals more frequently than once in any twelve month period and will not exceed the UK Retail Price Index or an increase in the cost of purchasing maintenance related spares beyond the reasonable control of CONTINUITY ASSURED, such as a large change to the exchange rate with the US dollar, whichever is the greater

10. Conditions

10.1 CONTINUITY ASSURED 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.

10.2 In addition to the Maintenance Charge, the Customer shall pay CONTINUITY ASSURED all additional charges for maintaining the System where Maintenance is due to any circumstances other than normal wear and tear.

10.3 CONTINUITY ASSURED shall be under no obligation to provide Maintenance Service so long as any sum due is in arrears for more than fifteen days and any additional charges incurred by the consequent delay in carrying out the Maintenance Service shall be paid by the Customer. The Customer acknowledges that a user requirement of the Branch Systems general License that telephone apparatus connected to the Public Switched Network must be maintained by a designated maintainer approved by the British Approvals Board for Telecommunications.

11. Interest

Any money due or payable to CONTINUITY ASSURED under this agreement which is ten days or more overdue shall accrue interest on a day to day basis at the rate of 3% per month or part thereafter from due date until date of payment.

12. 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 Tax and/or such other taxes as may be chargeable on the supply of equipment and services from time to time.

13. Default and Termination

13.1 If the Customer commits any breach of this agreement or any agreement with CONTINUITY ASSURED and fails to remedy it promptly on receiving written notice from CONTINUITY ASSURED or suffers distress or execution or commits an act of bankruptcy or goes into liquidation (except for amalgamation or reconstruction) or if it entered into an agreement or composition with creditors or if the Receiver is appointed over any part of the Customers 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 obligations under this agreement and at any time thereafter CONTINUITY ASSURED may (in addition to any other rights or remedies in law not withstanding that CONTINUITY ASSURED may have waived its rights under this Condition on so previous occasion) by written notice suspend performance of or determine the Maintenance Service. Breach of any contracts other than this one will limit the sanction by CONTINUITY ASSURED to suspension of maintenance service.

13.2 If CONTINUITY ASSURED terminates this Agreement in accordance with this clause, then without prejudice to any other rights CONTINUITY ASSURED may have, it shall be entitled:



(a) to retain any advance payment made by the Customer, to halt any goods in transit, and

(b) either by an agent or itself to have access to the Customer's premises for the protection, removal, realisation and disposal of any products at any time and from time to time in which the property shall not have passed from CONTINUITY ASSURED to the Customer.

14. Legal Construction

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

15. Invalidity

If any provision of this Agreement becomes invalid, illegal, or un-enforceable, the other provisions of this Agreement shall not be affected thereby.

16. Entire Agreement

This Agreement with the Schedules together with any authorised signed variations attached hereto set forth the companies agreement between the parties. No further amendment or modification to this Agreement will be effective or binding unless it is in writing signed by duly authorised representatives of the parties.

17. Notice

All demands and notices and shall be made in writing and sent to CONTINUITY ASSURED at the Company's registered address by recorded delivery.

18. Force Majeure

CONTINUITY ASSURED shall not be liable to the Customer for any failure to perform its obligations due to any circumstances beyond its control (including without limitation, strikes, lockouts, industrial disputes, failure of power supplies, delays caused by any other person, firm or company, defects caused by any manufacturer of the goods, riots, civil disturbances, war or warlike activities, embargoes, fire, explosion, flood, or natural causes) and in such event CONTINUITY ASSURED may elect by written notice to cancel any agreement with the Customer or elect that the time for performance shall be extended until such time as CONTINUITY ASSURED can reasonably effect performance.

19. Waiver

If the Customer shall be in breach of any of these Conditions then the failure by CONTINUITY ASSURED to require the Customer to rectify the same shall not create any assumption that such a breach has been waived by CONTINUITY ASSURED.



Levels of Cover

1. Request for Maintenance Service

The time of a request for maintenance service is defined as the time at which CONTINUITY ASSURED receives an accurate description of a fault.

(i) Standard Care (Monday to Friday 9.00am-5.00pm)

CONTINUITY ASSURED will use all reasonable endeavours to respond within 16 working hours for minor faults and 4 working hours for major faults to a request for Maintenance Service received between 9am to 5pm (excluding weekends and Public Holidays) either by arranging for a service engineer to make a site visit or by instituting remedial action through remote diagnostics or through interim solutions which restore service to the Customer.

(ii) Custom Care (24/7/365)

CONTINUITY ASSURED understand that standard service level agreements do not always meet a clients specific requirements. Our Custom Care service provides flexible cover 24 hours a day, 7 days a week 365 days a year in a cost effective and controlled manner.

During standard hours, Monday to Friday 9.00 to 17.00 (excluding bank holidays) parts and labour are covered. Outside these times the client may contact an engineer to report faults as if on full 24/7 cover whilst only paying for the engineering labour (all parts remain covered as main contract)

This enables each client to make the distinction between whether the call is urgent enough to require an out of hours response or wait and make the call in standard hours.

2. Maintenance Service Provided

Subject to the conditions stated in the Agreement CONTINUITY ASSURED shall at its discretion carry out routine checks by CONTINUITY ASSURED engineers for preventative maintenance of the System.

CONTINUITY ASSURED will require remote access to the System to carry out periodic checking of the System performance using remote diagnostics. CONTINUITY ASSURED service engineers will require site access to the System to make adjustments and repairs if remote diagnostics indicate any fault.