

Microcare Systems Limited

Terms and Conditions for Maintenance Customers

Effective Date: 1st June 2010

1. DEFINITIONS

1.1 In these Conditions the following terms shall have the following meanings:-

Additional Charges: means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 4.5 and/or condition 9;

Annual Support Charge: means the support charge for the Maintenance Services;

Business Day: means any and all days between Monday and Friday in any week but excluding English bank holidays or public holidays;

Carriers: means [telecommunications routing carriers];

Charges: means the charges payable by the Customer for Services as set out in the relevant Price List including the Annual Support Charge and Additional Charges (if any);

Contract: means the agreement between the Customer and Microcare for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions incorporated into the Contract in accordance with condition 2.1;

Commencement Date: means the commencement date for the Minimum Period of the Maintenance Services (where applicable) being the date of Delivery of the relevant Equipment or such other date as specified in the Service Specific Conditions (where applicable) or as otherwise agreed in writing between the parties;

Customer: means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that person's firm's or company's authority and includes where relevant the Customer's permitted assigns employees and agents, and where the context permits or requires shall also include (without limitation) the End User;

Delivery: means the point that the Equipment arrives at the Customer's premises before (where applicable) the unloading of Equipment from the delivery vehicle and 'Delivered' shall be construed accordingly;

Excluded services: means those services referred to in condition 6 below which do not fall within Maintenance Services;

Equipment: means the equipment hardware and/or software related products to be supplied under the Contract as set out in the Order Form and/or the schedule of Equipment annexed;

End User: means the person or persons for whose benefit the Equipment is ultimately provided;

Information: any information imparted in connection with this Contract imparted in whatever form, including, without limitation, financial and pricing information, business strategies and methods;

Installation: means the physical installation of Equipment at the Customer's premises;

Installation Services: means services relating to the supply and installation of Equipment (where applicable)

Maintenance Services: means the provision of equipment maintenance as set out in condition 4;

Microcare: means Microcare Systems Limited a company registered in England and Wales Registered No 3204267 and the expression "Microcare" includes the Microcare's permitted assigns employees and agents;

Minimum Period: means the minimum contract period applying to each of the Services commencing on the Commencement as defined in clause 5.1.

Normal Working Hours: means 9am to 5.30pm on any Business Day;

Order Form: means the order form overleaf at Section 1 which sets out the details of the order, including (without limitation) the Customer's details and the Equipment and/or Services to be supplied under the Contract, and constitutes the Customer's order;

Price: means the price for the Maintenance Services (where applicable);

Price List: means the Microcare's price list for each of the Services which may be varied from time to time;

Site: means any premises or site where Equipment is to be delivered and/or Services are to be performed.

Services: means any of the services supplied by Microcare including, without limitation, the Maintenance Services, Installation Services, and any services as agreed in writing by Microcare;

Service Specific Conditions: means any additional terms and conditions which are to apply to the Contract as specified in the Order Form in respect of specific Services; and

User Instructions: has the meaning given to it in condition 13.1(ii).

2. CONTRACT FORMATION

2.1 The details recorded on the Order Form, together with these Conditions and any other Service Specific Conditions referred to in the Order Form as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties except that such Contract shall not become binding on the parties until written notice of Microcare's acceptance of such order signed by an authorised representative of Microcare has been delivered to the Customer (and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of Microcare (in its sole discretion), and the Customer entering into a finance agreement (where applicable).

2.2 All quotations and tenders are given and contracts are made by Microcare subject to and only upon these Conditions and any Service Specific Conditions applicable in accordance with the Order Form, which cannot be varied unless previously agreed in writing by Microcare and these Conditions and any relevant Service Specific Conditions supersede and override all other terms and conditions appearing elsewhere including any terms and conditions of the Customer and any course of dealing established between Microcare and the Customer.

2.3 In the event of a conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions will prevail in respect of the relevant Service.

2.4 Any illustrations, samples or descriptive material, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any [savings] quoted are illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright (therein) shall remain the exclusive property of Microcare and must not be copied or loaned or transferred.

2.5 For the avoidance of doubt, tenders and quotations may be withdrawn or varied by Microcare at any time before acceptance by Microcare has taken place in accordance with condition 2.1, and unless otherwise specified shall be deemed to be withdrawn automatically thirty (30) days from their date of issue.

2.6 No variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by maintenance staff) will be accepted unless authorised by notice in writing by a Director of Microcare.

2.7 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.7 be deemed a separate contract (whether or not included on the same Order Form) to the extent that any delay or failure to supply Equipment and/or Services shall not entitle the Customer to terminate the Contract (to the extent that any such entitlement exists) for other Equipment and/or Services or any other contract entered into under these Conditions.

3. CUSTOMER'S ORDER AND SPECIFICATIONS

3.1 The Customer shall be responsible for providing Microcare with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable Microcare to duly perform the Contract.

3.2 Without limitation to the generality of condition 3.1, the Customer shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or the supply of any Services (as the case may be) by Microcare are accurate and fully describe the Customer's requirements and the Customer shall indemnify and hold Microcare harmless in respect of any liability, loss, injury, damage, demand, claim, cost charge or expense which may be incurred or sustained by Microcare by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto.

4. PROVISION OF MAINTENANCE SERVICES

4.1 The Maintenance Services shall apply only to mainland U.K in respect of Equipment as set out in the Order Form, which sets out the maintenance service level that the Customer requires, and any other equipment which it is agreed between the parties separately in writing shall be included under the Contract for Maintenance Services, which for the purposes of this condition 4 shall be deemed Equipment.

4.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, Microcare will, within 2 Business Days (defined as 16 working hours), on receipt of notification from the Customer of a request for the provisions of Maintenance Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship of Microcare and/or materials which in the opinion of Microcare are necessary for the proper functioning of the Equipment.

4.3 Where Microcare replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.

4.4 Microcare does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 9.1 and 9.2 will ensure that the Equipment operates without interruption or error.

4.5 Microcare shall use its reasonable endeavours and subject always to availability provide necessary spare parts (in the reasonable opinion of Microcare) required to keep the Equipment in satisfactory operation. All replaced parts shall become the property of Microcare. In the event that Microcare is unable to obtain such necessary spare parts (obsolete or otherwise), Microcare shall be entitled at its sole opinion to either:

- a) Terminate the Contract upon giving the Customer not less than two (2) weeks' notice; or
- b) Recommend alternative part or parts to the Customer, which shall be provided subject to Additional Charges being agreed for such supply.

4.6 All maintenance services are provided subject to the following fair use policy:

- (a) During any 12 month period Microcare will only replace equipment up to a value of 25% of the total value of the equipment maintained under the Contract. All additional equipment requiring replacement will be charged at Microcare's standard rates;
- (b) Microcare shall not make more than four unrelated site visits to a Customer in any 12 month period. Any additional site visits will be charged at Microcare's standard rates;
- (c) the Customer shall not make any more than twelve (12) support desk calls of Microcare in any 12 month period. Any additional calls shall be charged at Microcare's standard rate.

5. DURATION OF SERVICES

5.1 Subject to the payment of the Annual Support Charge by the Customer, Microcare shall supply to the Customer the Maintenance Services from the Commencement Date for no less than 1 year or the period of the hire agreement, whichever is greater or otherwise stated in Section 1 (unless earlier terminated in accordance with condition 16 or condition 12) (the "Minimum Period"). The Contract shall continue thereafter for a further term of 12 months "Renewal Term" until terminated by notice in writing by either party to the other, such notice to be no less than ninety (90) days prior to the expiry of the Minimum Period.

6. EXCLUSIONS

6.1 Subject to condition 9.1, Maintenance Services shall not include the following ("the Excluded Services"):

- (i) the repair of damage to the Equipment resulting from accident, neglect, misuse or causes other than ordinary use including failure to observe any instructions supplied by Microcare regarding the operation of the Equipment;
- (ii) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, acts of god, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of condition 13;
- (iii) the alteration, modification or maintenance of the Equipment by any other party other than Microcare without the Microcare's prior written consent;
- (iv) the transportation or relocation of the Equipment save where the same has been performed by or under direction of the Microcare; or
- (v) the maintenance or repair of any extension wiring, after the initial twelve (12) month warranty period has passed, any Equipment not at the Site or of anything other than the Equipment;
- (vi) any defect or error in any software used that does not form part of the annual support contract, upon or in association with the Equipment;
- (vii) the supply of replacement SLT's, consumable accessories, cassettes, aerials, aerial systems and batteries, ribbons, type elements, print heads, recorded data and media;
- (viii) reprogramming of the Equipment to provide improved or modified service or facilities;
- (ix) Equipment faults caused by telephone area code changes or changes in Carriers or hosted PBX systems.
- (x) Any overhead, concealed or underground cabling.
- (xi) Any faults on ancillary equipment connected to the system to include PC's, printers, modems, facsimile machines, external music players etc.
- (xii) Repair, labour or materials required as a result of "false calls". False calls are requests from the customer for maintenance when the Equipment is operating correctly but appears to be inoperative owing to misuse or to failure of some other installation directly or indirectly connected to the Equipment.
- (xiii) Software faults that require a visit to be made to Site.

7. PRICE

7.1 The Customer shall pay to Microcare the Annual Support Charge in accordance with condition 8.1.

7.2 Microcare may from time to time adjust the Annual Support Charge by advance notification in writing by up to 5% or the retail price index (RPI) whichever is the higher. Such adjustments shall not be made more than once in every 12 month period.

7.3 Notwithstanding condition 7.2, Microcare reserves the right to charge the following amounts depending on the age of the Equipment:

7.3.1 for Equipment which is over 5 years old (calculated from the date of Installation) – an additional 10% on top of the contract price;

7.3.2 for Equipment which is over 10 years old (calculated from date of Installation) – a one off fee of £50.

7.4 All sums referred to under these Conditions are (unless otherwise stated) exclusive of Value Added Tax and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of invoice.

8. PAYMENT

8.1 Where Microcare has agreed to raise an Annual Support Charge, Microcare shall send an invoice to the customer approximately one month prior to the anniversary of the commencement date, and annually thereafter upon each anniversary of that date. That invoice will be payable in accordance with its terms.

8.2 If payment of any sum payable to Microcare is not made on or before the due date Microcare shall be entitled to charge an administration fee of £45 and interest thereafter on such sum at the rate of 6% per annum above the current base rate of Barclays Bank PLC such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month.

8.3 Payment of all sums due to Microcare shall be made without any set-off whatsoever.

8.4 Invoices from Microcare shall be sent by email.

8.5 All payments to Microcare shall be made by direct debit unless otherwise agreed and an administration fee paid by the Customer. If the Customer cancels their direct debit they agree to pay Microcare a fee of £15 to reinstate it.

9. ADDITIONAL CHARGES

9.1 Microcare may upon request by the Customer provide all or any of the Excluded Services (as referred to in condition 6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 9.3 below.

9.2 Without prejudice to condition 9.1 above Microcare shall be entitled to levy Additional Charges in the manner described in condition 9.3 below if:

(a) Maintenance Services are provided in circumstances where any reasonably skilled and competent person would have judged the Customer's request to have been unnecessary (including, without limitation, any vexatious or unwarranted call outs); and/or

(b) the Customer reports an apparent fault of the Equipment to the Company and upon investigation by Microcare the Equipment and/or its installation is found not to be defective (in respect of a charge for the investigation and/or for any call-out including, without limitation, Equipment changed in a postal exchange where Microcare reserves the right to make a charge up to the replacement value of the item in question); and/or

(c) where a fault that has been reported to Microcare is not due to a fault of the Equipment, but instead as a result of acts or omissions of the Carrier or any service provided by the Carrier, a call-out charge will apply in accordance with Microcare's then-current Price List..

9.3 Additional Charges shall be levied by Microcare as follows:

(a) upon completion of the work in respect of additional services supplied under condition 8.1 and 9.2(a); and

(b) following completion of the investigation and/or call out in respect of condition 9.2(b) and (c) such Additional Charges (calculated in accordance with the Price List prevailing at the time) shall be payable by the Customer within thirty (30) days of receipt of an invoice.

9.4 In respect of a fault which is a failure by the Carrier as referred to in condition 9.2. (c) Microcare will provide to the Customer a Carrier fault reference that may be used by the Customer to recharge the cost Microcare has charged on to the Carrier, however this does not constitute any acceptance of liability for such costs by Microcare and for the avoidance of doubt Microcare is not liable to the Customer where the Carrier refuses to cover such costs (or any of them).

9.5 Microcare is entitled to charge the Customer for any carriage costs incurred to retrieve and return any equipment that is under manufacturer's warranty but does not form part of the equipment covered by the Contract.

10. TRANSFER FROM THIRD PARTY SUPPLIERS

10.1 Where the transfer of maintenance services from third party suppliers is selected by the Customer then the provision of any and all existing services supplied to the Customer and accepted by Microcare by such third party supplier will be automatically transferred to Microcare and charged for in the Company's invoices in accordance with the Price List, unless specifically excluded by the Customer on the Order Form under the heading for Additional Services. All requests for removing/providing Additional Services must be set out in the Order Form and are subject to lead times advised by such third party.

10.2 The Customer hereby acknowledges and accepts that it is the Customer and not Microcare who is liable for any charges made by third party suppliers for any transfer of services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Customer signing such Order Form that Microcare will pay for specified charges.

10.3 The Customer hereby acknowledges and accepts that a maintenance acceptance test (MAT) will be carried out by Microcare prior to the acceptance of a maintenance contract involving equipment or cabling installed or previously maintained by another party. Microcare will be entitled to charge the Customer for this service. Cabling may be accepted into maintenance at cost, provided it satisfies all relevant requirements including, without limitation, those of BS 6701, the OFTEL Wiring Code Parts 1, 2 and 3.

11. FAULT REPORTING

11.1 The Customer agrees to report all faults to Microcare via the Microcare Customer Service Desk on 0800 515513 or via email to: servicedesk@microcare-systems.co.uk

11.2 The Microcare Customer Service Desk will provide the following functions to enable the Customer to track the reported maintenance fault:

Fault Acceptance from Microcare.

Acceptance of requests for technical support from Microcare.

Point of contact for updates, clearances and initial escalations.

Provision of fault updates from Microcare.

11.3 'Fault acceptance' is defined as the receipt of a maintenance request from the Customer by Microcare's Customer Service Desk and the generation of a unique fault reference number, which will remain active until the fault is cleared and will be used by Microcare during fault updates.

11.4 Where requested during Normal Working Hours, Microcare will provide update information to the Customer. For periods outside of Normal Working Hours, updates will be provided to the Customer contact by Microcare in accordance with the severity of the fault.

11.5 The Microcare Customer Service Desk is manned between the hours of 08:30 and 17:30 during normal business days.

11.6 Microcare will request the following information (as a minimum) from the Customer when accepting a fault.

Customer's reference number

Customer's Maintenance contract Number.

Customer name and address.

Customer contact name and phone number.

Equipment details including the unique Microcare asset tag number that appears on all Microcare maintained equipment

12. DISCONTINUED SERVICES

12.1 Without prejudice to condition 16 or any other right of suspension or termination of Services under these Conditions, Microcare shall have the right to discontinue the Maintenance Services in respect of specified Equipment (without further liability to the Customer) in the event that Microcare's supplier and/or the manufacturer has ceased to supply such Equipment PROVIDED THAT Microcare shall notify the Customer as soon as it is aware of any cessation in supply of the Equipment and shall arrange with the Customer to either terminate the Contract or replace or upgrade the affected Equipment at the Customer's expense.

12.2 Without prejudice to condition 16 or any other right to terminate any Services under these Conditions, Microcare shall have the right to terminate forthwith the supply of the Maintenance Services (without further liability to the Customer) in the event that any necessary approvals required by Microcare to maintain any of the Equipment are disallowed or revoked by any government or regulatory agencies.

13. CUSTOMERS RESPONSIBILITIES

13.1 The Customer undertakes that:

- (i) it will use all reasonable endeavours to ensure that the Equipment is reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than three (3) months written notice in writing to the Customer, without further liability to the Customer.
- (ii) it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment("User Instructions");
- (iii) it will promptly carry out minor maintenance adjustments suggested by Microcare which includes minor changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
- (iv) it will not permit alteration to call routing apparatus or extension wiring except by Microcare, or by Microcare's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either (a) Microcare so agrees in writing and is signed by a Director of Microcare, or (b) Microcare fails to carry out the connection itself within sixty (60) days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
- (v) it will appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with Microcare;
- (vi) it will not employ a third party to make any alterations to the programming or physical structure of the Equipment. If the Customer is in breach of this Clause Microcare shall have the right to terminate the Contact on notice and the Customer shall pay to Microcare all sums which would be due to Microcare for the remainder of the Contract plus an administration fee at Microcare's then current rate;
- (vii) it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;
- (viii) if the Equipment is not (immediately prior to the Commencement Date) either already maintained by Microcare or within the scope of an express warranty given by the supplier thereof, then Microcare may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at Microcare's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.
- (ix) it will be responsible for obtaining and maintaining its telecommunication lines, broadband connection and necessary licences.

14. CHANGE OF LOCATION

14.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of Microcare, (such consent not to be unreasonably withheld). Where Microcare consents to such relocation, Microcare shall provide relocation and installation service, the cost of which shall be paid by the Customer in accordance with Microcare's then current Charges applying at that time, and such payment shall be in addition to the Annual Support Charge.

14.2 where the Customer moves any equipment without using the services of Microcare, Microcare will be entitled to charge the Customer for a survey at standard rates to enable Microcare to assess whether to continue to provide support under the Contract.

15. ACCESS TO PREMISES AND PROVISION OF INFORMATION

15.1 To enable Microcare to fulfill its obligations under any Contract:

15.1.1 The Customer shall permit or procure permission for Microcare and any other person(s) authorised by Microcare to have reasonable access to the Customer's (and/or the relevant End User's) premises, Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as Microcare requests.

15.1.2 Microcare will normally carry out work, by appointment and during Normal Working Hours but may request the Customer to provide access at other times consent to which will not be unreasonably withheld.

15.2 At the Customer's request, Microcare may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay Microcare's reasonable charges for complying with such a request.

15.3 The Customer warrants that it has adequate health and safety provisions in place at its premises and shall indemnify and hold harmless Microcare against any claims, costs, expenses (including, but not limited to, legal expenses) arising against Microcare in respect of any injury to property or person sustained by Microcare's employees, agents or sub-contractors whilst attending the Customer's premises. Should materials such as but not limited to Asbestos or any other harmful material then the Customer will pay the cost of removal and /or authorized

contractor to remove such materials to enable Microcare to complete the service work within fifteen (15) days of such material being identified.

16. TERMINATION AND CONSEQUENCES

16.1 Subject to conditions 16.3 and 16.4 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled to change or cancel an order that has been acknowledged by Microcare as provided in condition 1.2 except for termination in accordance with clause 5. In the event that the Customer terminates the Contract other than in accordance with clause 5.1 the Customer shall indemnify Microcare in full against all loss (including, but not limited to, all losses incurred by Microcare as a result of the Customer cancelling the contract before the end of the Minimum Period or where the contract has continued beyond the Minimum Period before the end of the Renewal Term which will include a minimum payment to Microcare of the amount of the outstanding Annual Support Charge that would have been paid by the Customer had the contract continued for the Minimum Period and/or the Renewal Term (as the case may be)), costs, damages, charges and expenses incurred by Microcare as a result of such changes or cancellation.

16.2 Without prejudice to any other rights of Microcare under these Conditions or otherwise, Microcare shall be entitled at any time and for any of confidentiality; or

(c) lawfully disclosed to the Recipient by a third party without any obligations of confidentiality; or

(d) replicated by development independently carried out by or for the Recipient by an employee or other person without access to or knowledge of the Information.

For the avoidance of doubt, in the event that Microcare terminates a Contract under this condition 16.2, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Period or Renewal Term applicable in respect of that Contract.

16.3 A Contract may be terminated forthwith by either party by notice in writing if the other party materially or persistently breaches its obligations under these Conditions or any Service Specific Conditions (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within 30 days of notice by the other party of what the breach is and requesting that the breach is remedied.

16.4 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of amalgamation or reconstruction) trustee in bankruptcy, administrator, receiver and manager is appointed in respect of the whole part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).

17. WARRANTIES AND LIMITATION OF LIABILITY

17.1 Unless otherwise stated in these Conditions (or any relevant Service Specific Conditions) Microcare makes no warranty in respect of the supply of Maintenance Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a Contract for the supply of such Services are hereby excluded to the fullest extent possible, save for those warranties which by reason of such statute or other direction, regulation or governmental authority cannot be excluded.

17.2 Subject to condition 17.6, in no circumstances shall Microcare's liability to the Customer in respect of one incident or series of connected incidents in any one year, exceed the Price paid for Equipment and Installation Services and/or the Charges payable for Services (as the case may be) payable for the relevant Equipment and Installation Services and/or the Charges for Services to which the claim or claims relate.

17.3 Subject to condition 17.6, with regard to defective Equipment, liability shall attach to Microcare only if the relevant Equipment and Installation Services (where applicable) have been paid for in full. Failure of the Customer to carry out any of the Customer's obligations shall relieve Microcare of any liability.

17.4 Under no circumstances shall Microcare be liable in any event for consequential loss, special damages, loss of profits (direct or indirect) or other indirect loss, however arising, whether or not Microcare knew or ought to have known that such losses or damages might be incurred including without limitation loss of income, interest or loss of markets.

17.5 Neither party shall be liable to the other party for any breach of any provision of the Contract caused by any reason outside the control or responsibility of that party including without limitation the failure of any Carrier to provide network capacity (or any element thereof) on which Microcare was reliant for the purposes of the Contract (whether in breach of contract or otherwise), any Act Of God, terrorist attacks, inclement weather, failure or shortage

or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

17.6 Nothing in these Conditions shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or its employees while acting in the course of their employment with that party or in respect of fraudulent misrepresentation.

18. CUSTOMER'S INDEMNITY

18.1 Without prejudice to any other rights of Microcare and/or any other indemnities in favour of Microcare, the Customer shall indemnify and hold harmless Microcare against all liabilities, claims, damages, losses and expenses whatsoever arising from any breach by the Customer of any warranties, undertakings and/or representations given under and/or any failure to comply with any responsibilities and liabilities of the Customer set out in these Conditions.

18.2 Without prejudice to conditions 18.1, in the event of any third party making a claim against Microcare arising out of the subject matter of the Contract, whether arising out of any negligence, breach of duty or other wrongful act or omission by Microcare, its servants or agents, or otherwise, in respect of any loss or damage outside or beyond the liability of Microcare to the Customer as limited herein, then the Customer shall indemnify

Microcare against any such claim (and all costs incurred therein) in respect whereof Microcare is by these terms declared to be under no liability to the Customer, or insofar as any such claim shall cause the total liability of Microcare to the Customer and all such claimants to exceed the limited sum set out in condition 17.

19. CONFIDENTIALITY

19.1 Either party receiving Information ("the Recipient") from the other shall not without the other's prior written consent use such Information except for Contract purposes or disclose such Information to any person other than Customer's employees, agents and contractors who have a need to know and who are bound by equivalent obligations of confidentiality. Any breach of such obligations by Microcare or the Customer's employees, agents or contractors (as the case may be) shall be deemed to be a breach by Microcare or the Customer respectively.

19.2 Condition 19.1 shall not apply to Information that is:

- (a) published except by a breach of the Contract; or
- (b) lawfully known to the Recipient at the time of disclosure and is not subject to any obligations of confidentiality; or
- (c) lawfully disclosed to the Recipient by a third party without any obligations

19.3 Notwithstanding the provisions of 19.1 the parties may disclose this Agreement to their professional advisers for the purpose of considering and/or enforcing its terms.

19.4 The Recipient may disclose Information where disclosure is required by law, by a court of competent jurisdiction or by a regulatory body with authority over its business, provided that (to the extent it is lawful to do so) the Recipient gives the Party who has provided the Information to it at least seven (7) days' prior notice of the disclosure.

19.5 Without limiting the generality of the foregoing, neither party shall produce, issue, publish or otherwise disseminate, or cause to be produced, issued, publish or otherwise disseminated, anything referring to the other party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

19.6 Either party that has during the course of the Contract received Information in a recorded form from the other (or has recorded received Information) shall return or destroy (at the option of the disclosing party) such records upon:

- (a) expiry or termination of the Contract; or
- (b) upon earlier request unless such records are part of the Supplies.

19.7 This Condition shall survive the Contract.

20. RELATIONSHIP BETWEEN THE PARTIES

20.1 The relationship between the Parties shall be solely that of independent contractors. Nothing in this Contract shall be deemed to constitute, create or give effect to or otherwise recognise a joint venture, partnership or formal business entity of any kind and the rights and obligations of the Parties shall be limited to those expressly set forth in this Contract. Nothing contained in this Contract shall be construed as authorising either party to act as an agent or representative of the other.

21. GENERAL

21.1 No forbearance or indulgence shown or granted by

Microcare to the Customer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of Microcare against the Customer or be regarded as a waiver of any of these Conditions.

21.2 These Conditions and any Contract shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with these Conditions to the exclusive jurisdiction of the English Courts.

21.3 Unless otherwise stated within any Service Specific Conditions, the Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

21.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the person, and to the address or fax number, given in the Order Form (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 21.4 is not within Normal Working Hours at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

21.5 Any Director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby Microcare shall be entitled to rely on such signatory as binding the Customer to the obligations set out in these Conditions and any relevant Service Specific Conditions in all respects.

21.6 The Customer shall not, without the prior written consent of Microcare, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.7 Microcare may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.8 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

21.9 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Microcare in connection with the Services.

21.10 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

21.11 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

21.12 The parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to it.

21.13 Microcare may amend these terms and conditions at any time and shall notify the Customer by email of any such changes. Such changes shall take effect 28 days after notification by Microcare.

Response Time Definitions

Unless otherwise agreed in writing between Microcare and the Customer, Microcare shall have been deemed to have responded to a reported fault the earliest of:

The time of arrival by Microcare's personnel at the Site or

The time at which Microcare has given advice to the Customer as to be taken by the Customer or a third party for the clearance of the fault; or

In the case of a reported fault which does not materially affect the operation or use of the Equipment, the time when Microcare have given telephone advice as it deems reasonable for action to be taken by the Customer pending attendance by Microcare at the Site.

Fault Category Definitions

Microcare has defined 3 classifications for reported faults or assistance. In order to classify a request the Customer should indicate the impact the issue has on the Equipment and its operation.

The Customer can request a specific classification in accordance with definitions listed below, however, Microcare reserves the right to reclassify the problem if it deems appropriate.

Where parties disagree on the classification of a particular problem, Microcare undertakes to discuss the problem with the Customer with a view to reaching a mutually acceptable classification. The classifications are as follows:

Level 1	Emergency Product Failure Affecting 60% or more channels, lines or extensions.
Level 2	Major Product Failure Attendant console. Affecting under 59% of channels, lines or extensions. All Software related faults. These are defined as non-service affecting issues.
Advice	Information and Configuration Requests (Advice Calls) These are defined as queries relating to the Equipment or configuration Issues; this facility is available by telephone, fax or email.
Remote	This is where we would only carry out labour under the contract terms and conditions by dialing into the system from our head office or remote location.