

This is a maintenance agreement (hereinafter referred to as the "Agreement") made between the persons or Company named on the DocuSign agreement (hereinafter referred to as the "Customer") and BDM Voice Ltd, Greenacre Court, Station Road, Burgess Hill, West Sussex, RH15 9DS registration number 05618725 (hereinafter referred to as the "Company") where the Company has agreed to provide to the Customer certain services in respect of the maintenance of the equipment detailed on the DocuSign agreement and identified by type and serial number (the "Equipment").

## **1 Charges**

- 1.1 The Charges shall be levied by the Company annually in advance and shall be payable by the Customer within 30 days of receipt of an invoice therefore.
- 1.2 The Charges shall be increased on each anniversary of this Agreement by a percentage equivalent to no more than 3% above the previous year's maintenance fee.
- 1.3 The Charges shall not include the cost of any Excepted Service (as defined in Clause 4.2).
- 1.4 Additional Charges (as defined in Clause 4) shall be levied by the Company on completion of an Excepted Service and shall be payable by the Customer within 30 days of receipt of an invoice thereafter.
- 1.5 If any charges quoted are exclusive of any applicable value added tax (unless specifically shown), the Customer shall be additionally liable to pay the required tax to the Company at the prevailing rate.
- 1.6 The Company reserves the right to charge the Customer interest in respect of the late payment of any Charges or Additional Charges due under this Agreement (as well after as before judgment) at the rate of 8% per annum.

## **2 Maintenance Services**

The Services to be provided by the Company are as follows:

- 2.1 To maintain the Equipment at the installation address detailed in the Agreement or other sites agreed in writing between the parties and detailed in the Agreement ("the Installation Address") in efficient working order and throughout the term of this Agreement, to execute by its servants, agents or contractors all repairs and replacements to the Equipment if necessitated (in the sole opinion of the Company) by fair wear and tear and or faulty workmanship and or faulty materials provided that the Customer shall have duly notified the Company of such fault or necessary repair in accordance with Clauses 5.2 and 5.3 hereof.
- 2.2 The Company shall, as soon as is reasonably practical after notification in accordance with Clauses 5.2 and 5.3 and subject to Clause 4, provide:

- 2.2.1 either a maintenance engineer to carry out during its normal hours any maintenance of and repairs and replacements to the Equipment that may reasonably be required by the Customer and shall carry out any maintenance repairs and replacements (including the provision of any materials and spare parts) as shall be necessary as a result of fair wear and tear arising from the proper operation of the Equipment.
- 2.2.2 or, where appropriate at the discretion of the Company, provide remote technical support.
- 2.3 For the avoidance of doubt any maintenance repairs or replacements or visits caused by other than (in the sole opinion of the Company) fair wear and tear arising from the proper operation of the Equipment or telecommunications network may be carried out at the Customer's expenses in accordance with Clause 4.2. All maintenance repairs or replacement may be carried out at the premises where the Equipment is installed or elsewhere at the discretion of the Company.

**3 Times for Maintenance Services**  
Save where otherwise agreed between the parties in writing the Services shall be carried out during normal working hours which means Monday to Friday, 9.00 am to 17.30 pm (excluding public holidays).

**4 Excepted Services**

- 4.1 The Services shall not include:
  - 4.1.1 electrical work external to the Equipment and including without limitation power supply or maintenance of accessories, attachments, machines or other devices not furnished by the Company;
  - 4.1.1 the painting or refinishing of the Equipment;
  - 4.1.2 the relocation or transportation of the Equipment;
  - 4.1.3 the provision of supplies for use in association with the Equipment;
  - 4.1.4 the replacement of Equipment of parts and other accessories necessitated by fair wear and tear which in the sole opinion of the Company, can no longer be economically maintained;
  - 4.1.5 repair of any wiring external to the Equipment cabinets and enclosures;
  - 4.1.6 battery maintenance or replacement of batteries of individual cells;
  - 4.1.7 failure of the Equipment which is subsequently found (in the sole opinion of the Company) to be mis-operation or failure of BT Equipment or electricity supply services;

- 4.1.8 the corrections of any fault due to:
  - 4.1.8.1 any accident or disaster affecting the Equipment including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary;
  - 4.1.8.2 the Customer's failure inability or refusal to afford the Company's personnel proper access to the Equipment;
  - 4.1.8.3 programming error affected by the Customer (in the sole opinion of the Company) resulting in the need for re-programming and or service visits;
  - 4.1.8.4 the Customer's failure to maintain a suitable environment for the Equipment at the Place of use in accordance with the Company's or manufacturer's written specification or otherwise including without limitation failure to maintain a constant power supply, air conditioning or humidity control;
  - 4.1.8.5 the Customer's neglect or misuse of the Equipment or its failure to operate the Equipment in accordance with the Company's or the manufacturer's instruction manuals or for the purposes for which it was designed;
  - 4.1.8.6 the alteration modification or maintenance of the Equipment by any party other than the Company without the Company's prior written consent;
  - 4.1.8.7 the transportation or relocation of the Equipment save where the same has been performed by or under the directions of the Company;
  - 4.1.8.8 the use of defective or inappropriate supplies with the Equipment;
  - 4.1.8.9 any other abnormal physical or electrical stress affecting the Equipment;
  - 4.1.8.10 any failure of British Telecommunications plc (or any other third party) to install, complete, make provision for or carry out any actions or obligations whatsoever.
- 4.2 The Company shall upon request of the Customer provide all or any (in its sole discretion) of the services referred to in this Clause 4 ("the "Excepted Services") but shall be entitled to charge for the same by levying additional charges to be calculated by the Company on a time and materials basis at its then prevailing rate and terms in the manner described in Clause 1.4 (the "Additional Charges").
- 4.3 Without prejudice to Clause 4.2 above the Company shall be entitled to levy Additional Charges in the manner described in Clause 1.4 if Services are provided in circumstances where any reasonably skilled and competent customer would have judged the Customer's request to have been unnecessary.

## **5 Customer's Obligations**

The Customer undertakes to the Company throughout the term of this Agreement:

- 5.1 to pay the Charges and Additional Charges in accordance with the terms of this agreement;
- 5.2 to give the Company fourteen days written notice of any work required so far as possible;
- 5.3 to notify the Company immediately of any fault in the Equipment or any repairs which might be necessary;
- 5.4 to grant the Company such access to the Equipment and the Place of use of the Equipment ("the Place of use") as the Company shall from time to time reasonably require in order to discharge its obligations hereunder;
- 5.5 to make available at the Place of use such facilities as the Company shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space storage and office furniture and equipment;
- 5.6 to take all reasonable precautions to protect the health and safety of the Company's employees, agents and subcontractors while on the Customer's premises;
- 5.7 to make available the Equipment and supply all documentation and other information necessary for the Company to diagnose any fault in the Equipment;
- 5.8 not to maintain service, repair, adjust, tamper with, alter or expand the Equipment or any part thereof or allow any work to be affected by an agent not appointed by the Company;
- 5.9 in the event that the Equipment to be connected is British Telecom (BT) or such other Public Switched Telephone Network (PSTN) operators' apparatus to comply with all BT and PSTN requirements and at the Customer's sole expense to arrange the provision of any BT or PSTN equipment specially required for the Customer's purpose;
- 5.10 to ensure that the environmental conditions at the Installation Address of the Equipment (approved by the Company or BT or other "PSTN" operator) are maintained at all times;

5.11 in the event of a modem or other equipment being provided to the Customer the modem or other equipment shall remain at the Installation Address for the duration of this Agreement. If at any time the Agreement with the Company is terminated the Company has the right to gain access to the Installation Address to remove the modem from the premises.

## **6 Limitation of Liability**

6.1 In this Agreement “Liability” means any liability arising by reason of any representation (unless fraudulent), or any breach of any implied term or any duty at common law, or under any statute, or under any express term of this Agreement.

6.2 The Company shall have no Liability to the Customer for loss of profit or any indirect, special or consequential Loss (as defined in Clause 6.3) of the Customer arising out of or in connection with the provision of any goods or services pursuant to this Agreement (except in respect of death or personal injury resulting from negligence) and the total Liability of the Customer so arising in any year of this Agreement in respect of any one event or series of connected events shall not exceed the Charges payable by the Customer in respect of that year.

6.3 In the context of this Clause 6 “Loss” means, in relation to the Customer, loss of profit or any other loss, damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, however the same may arise and whether occasioned by the negligence of the Company, its employees or agents or otherwise.

## **7 Customer’s Warranty**

7.1 The Customer warrants and undertakes to the Company that it is the owner charge or lessor of the Equipment and that it has full power and authority to enter into this Agreement and permit the Company to perform the Services.

7.2 The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of Clause 7.1 above and against all claims from third parties in the event that the Company is unable to keep the Equipment in good working order due to matters which (in the sole opinion of the Company) are in the control of the Customer or the Customer allows the Equipment to be altered adjusted or interfered with by persons other than the Company’s authorised engineers or agents or other apparatus is fitted without the Company’s agreement thereto.

7.3 In the case of line wiring, the Customer shall obtain and retain any necessary licenses way leaves of permission for attachment for supporting wiring and shall pay any rent and expenses in connection with the same and be responsible for any damage that maybe done to property of persons by such wiring.

## **8 Duration of Agreement**

- 8.1 This Agreement shall commence on the date set out in the agreement (the “Commencement Date”) and continue until terminated by either party in accordance with the provisions of Clause 9, but subject to the provisions of Clause 8.2 below.
- 8.2 This Agreement shall continue for a minimum period as set out in the order form under the “Term of the agreement”, payable in annual increments and continue thereafter from year to year until either party gives the other notice to terminate in accordance with the provisions of Clause 9.

## **9 Termination**

- 9.1 This Agreement may be terminated:
- 9.1.1 by the Customer upon giving to the Company not less than 90 days’ notice in writing, sent by recorded delivery to expire at the end of the “Term of the agreement” as documented on the agreement, or any anniversary thereafter at any time after the expiry of the “Term of the agreement”;
- 9.1.2 forthwith by the Company if the Customer fails to pay the Charges or any Additional Charges due hereunder within 14 days of the due date therefore;
- 9.1.3 forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within Clause 9.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 21 days of a written request by the other party to remedy the same;
- 9.1.4 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 9.2 If the Company terminates the contract in accordance with Clauses 9.1.2 to 9.1.4 then without prejudice to any other rights that the Company may have, it shall be entitled:
- 9.2.1 to retain any advance payment made by the Customer;
- 9.2.2 to suspend or determine any unfulfilled part of the Agreement;

- 9.2.3 to halt any goods in transit; and
- 9.2.4 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 been passed from the Company to the Customer.
- 9.3 In the event of the Customer requiring new or different Equipment during the currency of this Agreement, provided that the value of which is not less than the capital value of the Equipment (at the time of the purchase or acquisition), and on the Company agreeing to sell or supply the new Equipment to the Customer, then this Agreement will be waived by the Company without any penalty to the Customer.
- 9.4 In the event of the Customer being in material breach of the terms of this Agreement, the parties agree that:
- 9.4.1 the Customer will pay all monies due and owing under this Agreement up to the end of the annual Charge period in which the said breach occurred;
- 9.4.2 the Customer will pay liquidated damages calculated at the rate of 70% of the current Charges multiplied by the whole number of annual maintenance charge periods remaining under this Agreement;
- 9.4.3 the Customer recognises that the said percentages represent a fair measure of the losses and damages to the Company as would be calculated by a Court of Law;
- 9.4.4 this Agreement shall terminate immediately upon the payments referred to in sub-Clause 9.4.2 above, have been made by the Customer to the Company.
- 9.5 The waiver by the Company of a breach or fault of any of the provisions of this Agreement by the Customer shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.

## **10 Right to Sub-Contract or Assign**

- 10.1 The Company shall have the right to sub-contract all or any part of the services provided under this contract and reserves the right to assign this Agreement by written notice to the Customer.
- 10.2 The Customer shall not be entitled or have the right to assign this Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the Company.

## **11 Force Majeure**

The Company shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- 11.1 act of God, exclusion, flood, tempest, fire or accident;
- 11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 11.3 acts, restrictions, regulations, bye-laws, prohibition or measures of any kind on the part of any governmental, parliamentary or local authority;
- 11.4 import or export regulations or embargoes;
- 11.5 strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Company or of a third party);
- 11.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 11.7 power failure or breakdown in machinery.

## **12 Unauthorised use of the Services by Third Parties**

- 12.1 The Customer will be liable for all charges incurred for the use of the Services, irrespective of whether the Services have been used by the Customer, its employees, agents or representatives and any Unauthorised Third Party.
- 12.2 The Customer will be responsible for:
  - (a) preventing unauthorised use of the Services;
  - (b) maintaining the security of all systems, network elements and equipment within it's (or its employees', agents' or contractors') control; and
  - (c) maintaining (and ensuring that each of its authorised users maintains) the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or equipment.



### 12.3

Without limiting clause 12.1, the Customer will (or will procure that appropriately qualified third parties will) put in place and comply at all times with the following security measures:

- Remove all default password settings when deploying the PBX and limit access to any maintenance ports.
- Passwords and access codes should be changed regularly and if possible be alpha/ numeric and as many digits as the system allows. Avoid 000, 1234, extension number=PIN passwords
- Delete/change passwords for ex-employees
- Consider limiting call types by extension, if an extension user has no requirement to ring international/premium rate numbers then bar access to these call types.
- DISA – (Direct Inwards System Access) is typically used to allow employees to dial in from home and make outbound calls (usually high value call types, i.e. mobile, international etc) via the company PABX. Your maintainer has deactivated this; if reactivated it should be closely controlled.
- Secure the system physically, site it in a secure coms room and restrict access to that area
- Regular reviews of calls should be carried out to cover analysis of billed calls by originating extension also to identify irregular usage and unexpected traffic
- Ensure you fully understand your system's functionality and capabilities and restrict access to those services which you do not use.
- Mailboxes – block access to unallocated mailboxes on the system, change the default PIN on unused mail boxes
- Be vigilant for evidence of hacking – inability to get an outbound line is usually a good indicator of high volumes of traffic through your system. Check for calls outside business hours.
- Assess security of all PBX peripherals/applications: platform, operating system, password and permissions scheme. Carefully evaluate the security of any onboard remote management utility (e.g. PC Anywhere) for possible holes.
- Check firewall logs weekly
- If relevant set access PIN on smart phones that will use VOIP
- Limit VOIP registrations to office network
- For SIP systems, set credit limits per phone per day

### 12.4

The Company will only be responsible for providing the following security measures relating to the provision of the Services (and no others). Customers by not adopting the Company's standard procedure will by default be opting out of these protection measures at their own risk:

- For SIP trunks set usage limits per day and per week at carrier level
- Bar all premium rate calls at line, carrier and telephone system level
- Bar all international calls line, carrier and telephone system level

To instruct the Company otherwise, the Customer must request to opt out of the protection measures in writing and must accept full liability for any consequential loss or cost arising from the Customer's instruction.

- 12.5 The Customer will notify the Company immediately of any illegal, fraudulent or unauthorised use of the Services. On receipt of such a notice, the Company shall use reasonable efforts to suspend or prevent such use by the Unauthorised Third Party.
- 12.6 The Company will be entitled to suspend or terminate the provision of the Services (excluding access to the emergency services) upon receiving the notice required from the Customer under clause 12.5. The Company will lift its suspension or recommence its provision of the Services within a reasonable timescale after the Customer demonstrates to the Supplier's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use of the Services. The Customer will remain liable for the payment of the charges for the Services whilst the Service is suspended or terminated in accordance with this clause 12.5.
- 12.7 Where the Company has the right to suspend or terminate the Services under clause 12.6 and the conditions in which the Company is required to lift its suspension or recommence its provision of the Services under clause 12.6 have not been met within 30 days of the date on which the Company has received the relevant notice under clause 12.5, the Company will be entitled to terminate this agreement immediately or on such other notice as the Company may consider appropriate in the circumstances.

### **13 Jurisdiction**

- 13.1 This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English courts.

### **14 Entirety of Contract**

- 14.1 The terms of this Agreement embody the entire agreement between the parties and they shall govern the contract to the entire exclusion of any other express or implied conditions, promise, representations, various exclusions, additions and amendments unless agreed in writing and executed jointly by the Customer and a Director of the Company.
- 14.2 If any provision of this Agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected.
- 14.3 A person who is not a party to this Agreement obtains no benefit from this Agreement and has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**15**

**Headings**

Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.