

BERRY CARE ASSURE TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these terms and conditions:

Agreement: means the agreement between the Customer and the Supplier for the provision of the Assure Service incorporating these terms and conditions;

Assure Service: means the Network support service described in clause 4 below;

Business Days: means Mondays to Fridays excluding weekends and public holidays;

Commencement Date: means the date specified overleaf as the commencement date or if no date is specified the first day of the calendar month in respect of which the Customer has been invoiced by the Supplier;

Customer: means the person named overleaf;

Network: means the network over which the Customer's telephone system is provided including phone lines, call products and broadband but excluding equipment;

Supplier: means Berry Telecom Limited, registered in England and Wales with company number 07681963 whose registered office is at Berry Group House, Woodford Centre, Old Sarum Park, Salisbury SP4 6BU; and

Working Hours: 9:00am to 5:00pm.

2. SUPPLIER'S UNDERTAKING

In consideration of the payment by the Customer of the monthly service charge in accordance with the terms of clause 3, the Supplier undertakes to provide the Assure Service upon the terms and conditions of this Agreement.

3. CHARGES

3.1 The service charge for the Assure Service:

3.1.1 will be calculated as a fixed amount per telephone line per month as notified by the Supplier to the Customer from time to time in accordance with these terms;

3.1.2 is payable monthly in advance;

3.1.3 will be added to the Customer's regular telephone bill; and

3.1.4 will be payable in accordance with the Customer Service Agreement that the Customer is already subject to.

- 3.3 Where payment is outstanding for more than 30 days the Supplier may without liability suspend its obligations under this Agreement until payment of the overdue amount is made.
- 3.4 The Supplier reserves the right to charge interest at an annual rate of 4% above the base rate of National Westminster Bank plc calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by the Supplier of the full amount, whether before or after judgment.

4. ASSURE SERVICE

- 4.1 On the Customer informing the Supplier of any Network fault, the Supplier shall use reasonable endeavours to:
- 4.1.1 to inspect, test and diagnose the fault and implement a plan for resolution. If the fault cannot be fixed remotely, an engineer (**Engineer**) will be dispatched the next Business Day within Working Hours to attend on site at the Customer's premises to remedy the fault; and
- 4.1.2 (if required) implement call diversions to the Customer's telephone line to minimise down time.

5. EXCLUDED SUPPORT

- 5.1 The Supplier is not obliged to remedy a Network fault where the fault results from or is caused by any act or omission of the Customer including without limitation damage to equipment or an unplugged handset (**Excluded Cause**).
- 5.2 Where an Excluded Cause occurs, the Supplier shall be entitled to charge the Customer an additional fee in respect of the Engineer call out and time incurred at the Supplier's then prevailing rates.
- 5.3 For the avoidance of doubt maintenance of equipment is not covered by the Assure Service. Should the Customer require this a separate equipment maintenance agreement will need to be entered into between the Customer and the Supplier.

6. LIMITATION OF LIABILITY

- 6.1 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.
- 6.2 Subject always to clause 6.4 the Supplier shall not be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for (a) any loss (whether direct or indirect)

of profits, business, revenue, or goodwill; (b) any special, indirect or consequential loss, costs, damages, damages, charges or expenses however arising under these terms.

- 6.3 Subject always to clause 6.4 the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to an amount equal to the charges paid by the Customer to the Supplier for the Assure Service in the twelve month period prior to the date the liability arose.
- 6.4 The Supplier does not exclude or limit liability for fraud or fraudulent misrepresentation or death or personal injury caused by negligence.
- 6.5 The Supplier shall not be in breach of this Agreement nor liable for any delay in performing or failure to perform, any of its obligations under this Agreement if that delay or failure results from circumstances beyond the Supplier's reasonable control including (without limitation) flood, fire, lightning, war, sabotage, civil disturbance or governmental action, import regulations, embargoes or where the Customer has failed to comply with its obligations hereunder.

7. THE CUSTOMER'S OBLIGATIONS

- 7.1 The Customer agrees that it will:
- 7.1.1 pay the Supplier all amounts due under this Agreement at the due times;
- 7.1.2 provide the Engineer with full access to the Customer's premises to enable the Assure Service to be carried out; and
- 7.1.3 take any steps reasonably necessary to ensure the safety of the Supplier's Engineer when attending on site.

8. TERM & TERMINATION

- 8.1 This Agreement shall commence on the Commencement Date and subject to clause 8.2, shall continue until either the Customer or the Supplier gives to the other two months written notice to terminate this Agreement.
- 8.2 This Agreement may be terminated with immediate effect:
- 8.2.1 by the Customer at any time in the first three months from the Commencement Date by giving an opt out notice in writing to the Supplier provided that the Customer has not used the Assure Service during this time. If the Customer has used the Assure Service the provisions of clause 8.1 shall apply; or

- 8.2.2 by the Supplier if the Customer is in breach of any provision of this Agreement and does not rectify the breach within 14 days of the Supplier's notice of such breach;
or
- 8.2.3 by the Supplier if the Customer becomes unable to pay its debts in within the meaning of the Insolvency Act 1986, enters into liquidation or administration is subject to any other analogous insolvency proceeding.
- 8.3 On termination the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to this Agreement.
- 8.4 In the event the Customer validly terminates this Agreement in accordance with clause 8.2.1, the Supplier shall refund to the Customer all charges paid by the Customer.

9. GENERAL

- 9.1 The terms of this Agreement including the details overleaf, represent the entire agreement between the parties in relation to the support of the Network and no variation shall be binding unless signed by the director of the Supplier.
- 9.2 The monthly charge payable under this Agreement shall be reviewed annually and may be increased by the Supplier by not more than the rate of inflation determined in accordance with the Retail Prices Index.
- 9.3 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and in respect of a notice given under clause 8.1 shall be sent by recorded delivery.
- 9.4 No delay or failure by the Supplier in enforcing any provision of this Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of this Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
- 9.5 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.
- 9.6 The Supplier may assign its rights and obligations. The Customer may not assign its rights and obligations. In the event the Customer wishes to transfer all or a material part of its business and assets it shall give the Supplier at least 30 days prior notice of such intention.
- 9.7 The Supplier may change the terms of this Agreement at any time. The Supplier will publish details of such changes on line on the Supplier's website www.berrytelecom.co.uk at least two weeks before the change is to take effect.

9.8 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.