

# Avoira Limited's standard terms and conditions of maintenance and support for NEC systems.



Avoira has agreed to provide maintenance and support services for the Customer on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Additional Services:** any emergency maintenance and/or any Excluded Maintenance or other services performed by Avoira under this agreement.

**Additional Services Fees:** the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

**Additional Services Rates:** the rates set out in Part 2 of Schedule 1, as those rates are amended from time to time in accordance with the terms of this agreement.

**Avoira:** Avoira Limited a company incorporated and registered in England and Wales with company number 01763970 whose registered office is at Pennine House, Salford Street, Bury BL9 6YA.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks are open for business.

**Charges:** the Standard Maintenance Fees and the Additional Services Fees.

**Commencement Date:** the date stated in the Order Form.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance Services, who need to know the confidential information in question ("Representatives") to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Controller, processor, data subject, personal data, personal data breach, processing, and appropriate technical and organisational measures:** as defined in the Data Protection Legislation

**Customer:** the customer stated in the Order Form.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

#### Excluded Causes:

- a. a defect in the manufacturer's design of the Maintained Equipment;
- b. faulty materials or workmanship in the manufacture of the Maintained Equipment;
- c. use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by Avoira;
- d. any maintenance, alteration, connection, modification or adjustment performed by persons other than Avoira or its employees or agents unless approved by Avoira in accordance with clause 5(i);
- e. the Customer or a third party moving the Maintained Equipment or amending the configuration of the Customer's system;
- f. the use of the Maintained Equipment in breach of any of the provisions of the manufacturer's specifications or Good Industry Practice;
- g. a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- h. a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- i. the neglect or misuse of the Maintained Equipment;
- j. repair of damage caused by act of god, fire, flood, terrorism, adverse weather event, explosion, lightning, frost, water, labour disturbance, act of government (including statute, order or enforced government lockdown), the neglect or omission of any person other than a representative of Avoira or any other unforeseeable event out of the control of Avoira;
- k. failure to ensure that a suitable environment is provided for the Maintained Equipment;
- l. any back-ups of data held on the Maintained Equipment and system configuration;
- m. the effects of a cyber attack, Virus caused by third party products or any other unauthorised access to the Maintained Equipment;
- n. failure of network provider or network carrier service or SIP trunking;
- o. damage from any cause external to the Customer's equipment cabinets;
- p. failure of any element unique to the Customer's equipment; or
- q. under the agreement Avoira will provide Maintenance Services on Maintained Equipment involving servers (hardware or virtual) or PCs. In the event that the Customer runs third party products on any of the PC's, Avoira will not be responsible for providing a service on these third party products or for issues to the Maintained Equipment caused by such products.

**Excluded Maintenance:** any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

**Good Industry Practice:** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

**Good Working Order:** the Maintained Equipment operates in accordance with the manufacturer's specifications with all vulnerabilities mitigated where reasonably practicable in accordance with Good Industry Practice.

**Initial Period:** 12 months from and including the Commencement Date.

**Legacy Equipment:** NEC iS3000, iS3010, iS3030, iS3070 & iS3090, IP-PM Peripheral Modules platforms, SV7000, SV8100, SV8300 and SV8500.

**Location(s):** the location of the Maintained Equipment at the Customer's premises as specified in the Order Form, or any other location as may be agreed by the parties in writing from time to time.

**Maintained Equipment:** the equipment specified in Part 1 of Schedule 2.

**Maintenance Services:** the maintenance and support services set out in the Proposal provided in accordance with this agreement and the scope at Schedule 1, but subject to the exclusions in Schedule 3.

**Normal Business Hours:** 8.30 am to 5.00 pm GMT on a Business Day.

**Order Form:** the order form for the goods and/or services provided by Avoira to the Customer.

**Proposal:** the proposal provided to the Customer by Avoira as referenced in the Order Form.

**Renewal Period:** each successive 12-month period after the Initial Period for which this agreement is renewed.

**Response Time:** the applicable response times as set out in the Service Levels.

**Service Levels:** the levels to which Avoira must perform the Maintenance Services, as set out in the Proposal and in Schedule 3.

**Standard Maintenance Fees:** the fees payable by the Customer for the provision of the Maintenance Services, as set out in the Proposal and the Order Form, as these fees are varied from time to time in accordance with the terms of this agreement.

**Term:** the Initial Period together with all Renewal Periods.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Virus:** any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes e-mail.

1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2. Maintenance Services

2.1 During the Term, Avoira shall provide the Customer with the Maintenance Services for the Maintained Equipment in accordance with Schedule 1 on the terms of this agreement and subject to the exclusions in Schedule 3.

2.2 Avoira may provide a service outside of this agreement at the Customer's request. Any such services will be charged as Additional Services.

2.3 Avoira shall procure that its personnel shall, while on site at the Location(s), comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel in writing in advance.

2.4 In the event that any material amendments, alterations or additions are made to the Maintained Equipment by anyone other than Avoira which has not been agreed in writing with Avoira, Avoira may inspect the amendments, additions or alterations and increase the Standard Maintenance Fees accordingly to provide the additional support or maintenance.

2.5 In the event that additional equipment, whether hardware software or otherwise, is purchased by the Customer from Avoira, this will be added to the Maintained Equipment and any applicable support and maintenance will be charged by Avoira on a pro-rata basis at the Additional Services Rates or at such rates as may be mutually agreed between the parties.

2.6 Avoira may charge reasonable abortive costs as Additional Fees in the following circumstances

- a. if the Customer incorrectly reports Maintained Equipment as faulty;
- b. any fault is found to be the result of the Customer failing to comply with the terms of this agreement;
- c. the fault is proved to be from an external source unrelated to Avoira and outside of its control; or
- d. the visit to repair the Maintained Equipment, judged from the viewpoint of a reasonably skilled and qualified engineer, was unnecessary.

- 2.7 The Customer shall be liable for all charges made by any public telephone network or network services provider relating to the Maintained Equipment during the term of this agreement arising from the use of the telephone network.
- 3. Service Levels**
- 3.1 Avaira shall use reasonable endeavours to perform the Maintenance Services for Legacy Equipment in accordance with the Service Levels. Avaira shall perform the Maintenance Services for all Maintained Equipment excluding Legacy Equipment in accordance with the Service Levels.
- 4. Replacements and Spare Parts**
- 4.1 In performing the Maintenance Services, Avaira shall use reasonable endeavours to source spare parts (whether new or pre-used) required to restore the Maintained Equipment to Good Working Order. Where Avaira can reasonably source individual spare parts, Avaira shall have the right to charge the Customer for the spare parts.
- 4.2 All spare parts and/or replacements provided by Avaira to the Customer shall become part of the Maintained Equipment and the property of the Customer. Avaira will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by Avaira. All parts and components removed from the Maintained Equipment by Avaira in the course of performing the Maintenance Services shall no longer constitute part of the Maintained Equipment and will be the property of Avaira. The Customer will assign to Avaira, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by Avaira in accordance with this clause 4.2.
- 5. Customer's Obligations**
- The Customer Shall:
- ensure that the Maintained Equipment is installed and kept at the Location(s), under suitable conditions, as specified in the manufacturer's specifications, and permit only trained and competent personnel to use it ensuring it is used in an appropriate manner and any operating instructions as Avaira may give from time to time are followed;
  - notify Avaira promptly if the Maintained Equipment is discovered to be operating incorrectly or to contain a vulnerability;
  - at all reasonable times permit full and free access to the Location(s) and to the Maintained Equipment to Avaira, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Avaira to perform the Maintenance Services and the Additional Services while at the Location(s);
  - purchase, install and maintain telecommunications facilities to allow Avaira to perform remote maintenance on the Maintained Equipment and dedicate an appropriate number of the Customer's staff to ensure that this is readily available. Failure to do so could result in response times in excess of those stated in the Service Levels;
  - in line with the Customer's network access policies to provide full and free access into the Customer's network to Avaira, its employees, contractors and agents in order to carry out remote maintenance to performance the Maintenance Services and the Additional Services. In the event that remote access is unavailable Avaira reserves the right to charge Additional Services Fees for applicable call out charges;
  - provide any equipment that may be required by Avaira to carry out routine maintenance on Maintained Equipment situated at more than two metres high;
  - provide Avaira with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;
  - take any steps reasonably necessary to ensure the safety of Avaira's personnel when attending the Location(s);
  - not allow any person other than Avaira to maintain, alter, modify, adjust or make connection to the Maintained Equipment without the prior written approval of Avaira;
  - not move the Maintained Equipment from the Location(s) without the prior written approval of Avaira (such approval not to be unreasonably withheld or delayed). Any relocation of the Maintained Equipment may result in an increase to the Standard Maintenance Fees as mutually agreed between the parties;
  - at all times maintain and where necessary replace data storage facilities. Avaira is not responsible for maintenance of data storage under the agreement;
  - maintain a regular back up of the Maintained Equipment and any data contained within and system configuration and customer data records;
  - store any reserve equipment only in conditions approved by Avaira, and make this equipment available for periodic maintenance, as with all other Maintained Equipment;
  - ensure the availability of any ancillary equipment which the Customer has agreed to provide in Good Working Order in order to enable Avaira to carry out the Maintenance Services;
  - provide Avaira with access to audit the Maintained Equipment as and when required in order to ensure compliance with this agreement;
  - only use equipment, supplies or materials supplied or approved by Avaira (such approval not to be unreasonably withheld or delayed);
  - provide and maintain a suitable data network;
  - ensure the public telephone network connection point is kept secure and is accessible to Avaira;
  - ensure any passwords which Avaira require to provide maintenance and service on the Maintained Equipment are not changed without prior notification to Avaira;
  - ensure statutory requirements relating to the Maintained Equipment are complied with at all times;
  - ensure any necessary wayleaves, licences or other permissions are obtained where required in relation to the Maintained Equipment; and
  - ensure all licences required to operate the Maintained Equipment are purchased and updated where necessary.
- 6. Excluded Maintenance**
- 6.1 Avaira is not obliged to perform any Excluded Maintenance but, subject to clause 6.2, shall use reasonable endeavours to provide assistance to ensure that the Customer has effective use of the Maintained Equipment.
- 6.2 Where Avaira is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, Avaira may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.
- 7. Charges**
- 7.1 For the performance of Maintenance Services the Customer shall pay to Avaira the Standard Maintenance Fees from the Commencement Date.
- 7.2 For the performance of any Additional Services, the Customer shall pay to Avaira the Additional Services Fees. Additional Services Fees shall, where applicable, be payable from the Commencement Date.
- 7.3 The Standard Maintenance Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with clause 4.1, and Avaira shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with clause 4.1).
- 7.4 The Standard Maintenance Fees shall be due and payable in full to Avaira quarterly in advance, within 30 days of receipt of a valid invoice from Avaira.
- 7.5 Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from Avaira. Any charges for spare parts recoverable in accordance with clause 4.1 shall be due within 30 days of receipt of a valid invoice from Avaira.
- 7.6 If the Customer fails to make any payment due to Avaira under this agreement by the due date for payment, then, without limiting Avaira's remedies under clause 11, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 If the Customer fails to make any payment due to Avaira under this agreement by the due date for payment and the sum is not validly disputed by the Customer, then, without limiting Avaira's remedies under clause 11, Avaira shall be entitled to suspend the Maintenance Services and any other services provided under this Agreement until the outstanding sums are paid in full.
- 7.8 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.9 Avaira may, at any time after the first anniversary of the Commencement Date, increase the Standard Maintenance Fees and the Additional Services Rates by giving to the Customer not less than three months written notice, in the following circumstances:
- a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of the second or any subsequent increase) up to the date of this notice; or
  - an increase of manufacturer's costs, software assurance, licences or unexpected cost of doing business.
- 8. Avaira Warranties**
- 8.1 Avaira represents and warrants to the Customer that:
- the Maintenance Services and the Additional Services shall be performed:
    - by an appropriate number of suitably qualified and experienced personnel;
    - using all reasonable skill and care and in accordance with Good Industry Practice; and
    - in accordance with all laws and regulations in force from time to time which are applicable to Avaira.
  - all components and equipment supplied or used in the course of the provision of the Maintenance Services and the Additional Services shall operate materially in accordance with their technical specifications, limited to the manufacturer warranty and support for both hardware and software;
  - Avaira has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this agreement;
  - Avaira shall take reasonable steps to not introduce any vulnerabilities or Viruses into the Maintained Equipment, or the Customer's network and information systems, by way of the Maintenance Services or the Additional Services or otherwise.
- 8.2 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.
- 9. Liability**
- 9.1 Neither party excludes or limits liability to the other party for:
- fraud or fraudulent misrepresentation;
  - death or personal injury caused by negligence; or
  - a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 9.2 Subject always to clause 9.1, neither party shall be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
  - loss or corruption (whether direct or indirect) of data or information; or
  - any special, indirect or consequential loss, costs, damages, charges or expenses,
- in each case, however arising under this agreement.
- 9.3 Subject always to clause 9.1, each party'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, contemplated performance, or non-performance of this agreement shall be limited to the total Charges paid by the Customer to Avaira during the 12-month period immediately preceding the date on which the first cause of action under this agreement first arose.
- 10. Confidentiality and compliance with policies**
- 10.1 The term Confidential Information does not include any information that:
- is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - was known to the receiving party before the information was disclosed to it by the disclosing party;
  - the parties agree in writing is not confidential or may be disclosed; or
  - is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 10.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement ("Permitted Purpose"); or
  - disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
- it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
  - at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10.

- 10.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 10.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.
- 10.6 The above provisions of this clause 10 shall continue to apply after termination of this agreement.
- 11. Terms and Termination**
- 11.1 This agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with clause 11, this agreement shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.
- 11.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
  - the other party commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - the other party:
    - suspends, or threatens to suspend, payment of its debts;
    - is unable to pay its debts as they fall due or admits inability to pay its debts;
    - (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    - (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
    - (being a partnership) has any partner to whom any of clause 11.2(c)(i) to clause 11.2(c)(iv) apply.
  - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over that other party (being a company);
  - the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;
  - a creditor or encumbrancer of that other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of that other party's assets and that attachment or process is not discharged within 14 days;
  - any event occurs or proceeding is taken with respect to that other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to clause 11.2(i) (inclusive);
  - that other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 11.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 11.4 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 11.5 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- return or destroy (or, in the case of electronic data, delete), as directed in writing by the other party, any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party for the purposes of this agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it shall provide written evidence in the form of a letter no later than 14 days after termination of this agreement that these have been destroyed or deleted and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 10;
  - delete any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation in the form of a letter no later than 14 days after termination of this agreement that this software and Confidential Information has been deleted;
  - return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;
  - Avoira shall provide all reasonable assistance to the Customer and/or any third party engaged by the Customer in connection with the maintenance and support of the Maintained Equipment;
  - the Customer shall immediately pay any outstanding amounts owed to Avoira pursuant to this agreement.
- 11.6 If a party is required by any applicable law or regulation, or government or regulatory body of competent jurisdiction to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain and the reasons for such retention, and it shall be entitled to retain such documents or materials for the period required by the relevant applicable law or regulation or government or regulatory body provided that at all times that clause 11 shall continue to apply to any retained documents and materials.
- 11.7 Electronic data shall be considered deleted, for the purposes of clause 11.5, where it has been put beyond use by the deleting party.
- 12. Force Majeure**
- Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (including for the avoidance of doubt an inability to perform its obligations due to the effects of the coronavirus pandemic). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.
- 13. Assignment**
- 13.1 Subject to Clause 13.2, this agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust or in deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party (which is not to be unreasonably withheld or delayed).
- 13.2 Avoira shall have the right to sub-contract all or any part of its rights and obligations under this agreement. Any such arrangement shall not release Avoira from its responsibilities or liabilities under this Agreement.
- 14. Freedom of Information**
- 14.1 Avoira acknowledges that the Customer may be subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIRs"). The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs.
- 14.2 The information contained in schedules 1, 2 and 5 of this agreement is sensitive commercial information, the disclosure of which would cause significant prejudice to the commercial interests of Avoira. This information is classed as "Exempted Information" for the purposes of FOIA and EIR.
- 14.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a request for information to the extent that it is permissible and reasonably practical for it to do so, but shall ensure that it does not disclose in its response any "Exempted Information".
- 15. Waiver**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16. Notice**
- 16.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery, at its registered office (if a company) or (in any other case) its principal place of business.
- 16.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting.
- 16.3 This clause 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.
- 17. Data Protection**
- 17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.2 The parties acknowledge that:
- if Avoira processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and Avoira is the processor for the purposes of the Data Protection Legislation.
  - the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Avoira's other obligations under this agreement.
- 17.3 Without prejudice to the generality of clause 17.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Avoira for the duration and purposes of this agreement so that Avoira may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 17.4 Without prejudice to the generality of clause 17.1, Avoira shall, in relation to any personal data processed in connection with the performance by Avoira of its obligations under this agreement:
- process that personal data only on the instructions of the Customer unless Avoira is required by the laws of any member of the European Union or by the laws of the European Union applicable to Avoira and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws);
  - ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Avoira, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
  - not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
    - the Customer or Avoira has provided appropriate safeguards in relation to the transfer;
    - the data subject has enforceable rights and effective legal remedies;
    - Avoira complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - Avoira complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - notify the Customer without undue delay on becoming aware of a personal data breach;

- f. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- g. maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of Avaira, an instruction infringes the Data Protection Legislation.
- 17.5 Either party may, at any time on not less than 30 days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

**18. Entire Agreement**

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**19. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. Severance**

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**21. No partnership or agency**

21.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**22. Third-party rights**

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

**23. Rights and Remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**24. Governing Law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**25. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated on the Order Form.

**Schedule 1 - Scope of Maintenance Services**

1. Avaira agree to provide Maintenance Services in accordance with the Proposal and to provide the Maintenance Services as follows:
- 1.1 Avaira shall provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use reasonable endeavours to provide such preventive and on-call remedial maintenance as it shall deem necessary to ensure effective use of the Maintained Equipment for the Customer;
- 1.2 Avaira shall carry out all work which is reasonably necessary to enable the Maintained Equipment to operate in accordance with the manufacturer's specification and in particular will carry out all necessary repairs to the Maintained Equipment and supply and fit such replacement parts as are necessary through normal wear and tear.
- 1.3 Avaira may, where repairs cannot be effected by component replacement, provide replacement assemblies and sub-assemblies excluding telephones and handsets and Avaira will retain a written record of all replacement items supplied. All replacements shall be deemed to be acceptable to the Customer as a permanent replacement.
- 1.4 On the Customer informing Avaira that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, Avaira shall:
- a. provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use reasonable endeavours to perform corrective maintenance of the Maintained Equipment in accordance with the response time stated in the Service Levels; and
- b. where, in Avaira's opinion, it cannot reasonably perform corrective maintenance remotely, provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use reasonable endeavours to send an engineer to attend at the Location(s) during Normal Business Hours within the relevant Response Time.
- 1.5 On the Customer informing Avaira outside of Normal Business Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, Avaira shall:
- a. provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use all reasonable endeavours to perform emergency maintenance of the Maintained Equipment in accordance with the response time stated in the Service Levels; and
- b. where, in Avaira's opinion, it cannot reasonably perform emergency maintenance remotely, provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use reasonable endeavours to send an engineer to attend at the Location(s) within the relevant Response Time.

- 1.6 Maintenance Services or Additional Services performed by Avaira outside of Normal Business Hours shall be charged at the Additional Services Rates for each of Avaira's personnel involved in the performance of such services. In the event that emergency maintenance or Additional Services are required on equipment outside of the scope of this agreement, it shall be charged at the Additional Services Rates. Any additional charges shall be calculated, in the case of emergency maintenance that is performed remotely, from the time at which the relevant Supplier personnel commence performance of emergency maintenance, and in the case of emergency maintenance that is performed at the Location(s), from when the personnel arrive at the Location(s) until they leave the Location(s).
- 1.7 In performing any Maintenance Services, Avaira shall provide the Maintenance Services in accordance with the Service Levels for the Maintained Equipment and shall use reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order either remotely or while in attendance at the Location(s). Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, Avaira shall either arrange for a further visit to the Location(s) within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
- 1.8 All work undertaken under this agreement will be recorded on Avaira's fault management system, details of which are available on request. Avaira retains a record of all service reports, details of helpline and remote access fixes.

**Schedule 2 - Contract Specific Information (Part 1 - Maintained Equipment)**

Subject to the exclusions listed in schedule 3, the Maintained Equipment is the existing NEC equipment held by the Customer at the Location(s). The parties shall use reasonable endeavours to ensure that a full site audit is undertaken as soon as reasonably practicable after the Commencement Date. This will be signed by both parties and added to this agreement as Addendum 1. Upon signature by both parties the definition of Maintained Equipment under this agreement will be the equipment listed in Addendum 1. The definition of Location(s) under this agreement will be the location specified in Addendum 1.

In the event that further equipment is added to the Maintained Equipment which the Customer requires maintenance and support for from Avaira following the date of signature by both parties of Addendum 1, the maintenance and support for the further equipment will be charged separately by Avaira.

**Part 2**

**Support Cover:** Normal Business Hours (Mon to Fri 08.30hrs to 17.00hrs excluding Bank Holidays)

**Added Value:** See Proposal

**Additional Service Rates:**

Normal Business Hours	Half Day - £350 plus VAT; Full Day £650 plus VAT
Monday to Friday outside of Normal Business Hours	£121.87 plus VAT per hour
Saturday	£121.87 plus VAT per hour
Sunday	£162.50 plus VAT per hour
UK public holidays	£162.50 plus VAT per hour

**Schedule 3 - Specific Limitations**

This schedule details specific limitations on Avaira's obligations to provide support and maintenance on the Maintained Equipment and in relation to products which the Customer uses, whether at the Location(s) or otherwise.

**Exclusions**

- 1.1 Avaira is not obliged to provide maintenance and support in relation to the following items:
- Block Wiring;
  - Handsets, analogue, digital, IP or DECT cordless sets;
  - UPS – Back-up Batteries;
  - PC – Servers – Operating Software (unless specifically requested, in which case Avaira can provide a separate fee quote).
- 2.2 Avaira is not obliged to provide maintenance and support in relation to PABX Rectifiers but will use reasonable endeavours to provide maintenance and support as far as it is reasonably practicable to do so.

Under the agreement Avaira will provide Maintenance Services on Maintained Equipment involving servers (hardware or virtual) or PCs. In the event that the Customer runs third party products on any of the PC's, Avaira will not be responsible for providing a service on these third-party products or for issues to the Maintained Equipment caused by such products. Subject to a satisfactory survey undertaken by Avaira that the servers (hardware or virtual) or PCs are fit for purpose, Avaira is only obliged to provide Maintenance Services on a reasonable endeavours basis for: (1) server hardware up to 4 years old from the date when it was originally installed; (2) operating software whilst it continues to be supported by the original manufacturer; and (3) software for NEC applications where the end user has valid software assurance.

**2. End of Delivery/End of Service Products**

- 2.1 The following products have been designated end of delivery since 2017 and are dependent on available second user stock. Avaira's obligation to provide maintenance and support in relation to the following items is on a reasonable endeavours basis:
- NEC iS3000 PABX TDM/Hybrid Hardware, Peripherals, including DECT TDM Wireless Base Stations, In Skin BIM's (Backup Interface Module);
  - NEC SV8500, SV8100 & SV8300.

2.2 In the event that other products in the Maintained Equipment become end of delivery or obsolete, Avaira's obligation to provide maintenance and support in relation to the following items is on a reasonable endeavours basis.

**3. Software Assurance**

3.1 In circumstances where software cover or assurance is not mentioned in the Proposal, this is excluded from the agreement.

**4. Third Party (back to back) Agreements**

4.1 Unless specifically noted in the Proposal these are not included in the cover provided by this agreement.

#### Schedule 4 - Service Levels

Priority	Classification	Description	Response
P1	Critical Fault	You have encountered an Emergency issue- system(s) down, total loss of communications both internal and external, total loss of associated telephony application(s) such as all operator consoles, the contact centre or 50% of contact centre agents. The product(s) are unusable in its current state.	2 x working hours
P2	Major Fault	The system(s) are available but experiencing issues such as loss of 16 or more users, loss of incoming or outgoing calls or both, loss of more than one operator console, multiple contact centre agents, complete loss of voice mail system	4 x working hours
P3	Minor Fault	Fault effecting less than 16 users, or non-service, operational affecting issues, which is not included in the definition of either Critical or Major classification.	16 x working hours
P4	None- Service effecting – Low priority	These are defined as queries relating to the equipment or configuration issues; this facility is available by telephone or e-mail.	N/A

For the purposes of the above, a response is classed as an engineering telephone call, remote access into the telephony network or an engineering visit to site.

#### Part 2 - Contact Details

##### Avoira address:

Avoira Limited, Pennine House, Salford Street, Bury BL9 6YA

##### Service centre fault reporting:

NECsupport@Avoira.com  
0161 763 2190

##### First escalation point:

Engineering Team Leader – John Small  
John.Small@Avoira.com  
07778 139 220

##### Second escalation point:

Group Head of Technical Services  
Stephen.Duffy@Avoira.Com  
07941 428 557