



Rainbow Asset Finance Terms and Conditions

1. AGREEMENT TERM

This Agreement shall commence on the Installation Date or continue on from any existing Agreement currently in place and shall continue thereafter for a minimum period of twelve months and shall then (except as otherwise provided by this Agreement) automatically continue from year to year unless and until determined by either party giving to the other not less than 90 days notice in writing served, so as to expire where the Equipment has been purchased on any anniversary of this Agreement after the Minimum Period, or in the case of rental or lease of the Equipment, on expiry of such rental or lease if greater than the Minimum Period.

2. MAINTENANCE AND REPAIRS

(a) Subject to Clause 2(b) the Company will maintain the Equipment (including providing all necessary spare parts at its expense) either by its servants or agents or contractors and the Customer will give access to the Equipment for this purpose. The Customer will promptly notify the Company when any fault in the Equipment to enable the Company to perform its obligations under this Agreement. Refusal to allow such access will entitle the Company to levy a charge.

The Customer will protect the health and safety of the Company's servants, agents and contractors whilst they are on the Customer's premises and will indemnify the Company against any claims arising out of their failure to do so.

(b) The Customer will ensure that its employees, contractors and other third parties will not attempt to maintain the Equipment or any cabling attached thereto or to change, reconfigure, re-program, revise the size or specification of or otherwise alter the Equipment or any cabling attached thereto during the term of this Agreement.

(c) The Company shall not be obliged to provide maintenance service hereunder if any maintenance of the Equipment is necessitated as a result of any cause other than i) fair wear and tear, or ii) the Company's neglect or fault. Causes other than fair wear and tear or the Company's neglect or fault shall include, without limitation, the following

i) failure or fluctuation of electrical power, air conditioning, humidity control or other environmental conditions; or

ii) accident, transportation, neglect, misuse or default of the Customer, its employees or agents or any third party (including any defect caused by BT Pic or any other operator providing telecommunications service to the public);

or

iii) any fault in any attachment or associated Equipment (whether or not supplied by the Company) which does not form part of the Equipment; or

iv) any act of God, inclement weather, fire, flood, war, act of violence, or any other occurrence beyond the reasonable control of the Company; or

v) any attempt by any person other than the Company's personnel to change, reconfigure, re-program, revise the size or specification of or otherwise alter the Equipment or any cabling attached thereto or to maintain the Equipment or any cabling attached thereto.

d) Nothing in these conditions shall render the Company liable to the Customer for any resulting or consequential loss including loss of profits), damage or inconvenience caused by any defect arising howsoever to the Equipment.

e) The Company will (if it is able so to do) at the request and expense of the Customer repair or replace any part of the Equipment which has failed due to a cause other than fair wear or tear.

f) The Company shall not be liable for any delay or failure in performing its obligations hereunder if any spare parts are not available.

g) If a Customer requests the Company's service without good reason (or in respect of any Equipment or fault not covered by the terms of this Agreement) the Customer will be liable to pay to the Company further charges in accordance with the Company's then subsisting scale of charges for such services, such charges being in addition to any other monies due under this Agreement or under any other Agreement between the Company and the Customer.

h) The Customer must not attempt to repair the Equipment in the event of breakdown but must notify the Company as soon as practicable after the fault comes to the Customer's notice,

i) If any damage or breakdown has been caused by default or carelessness of the Customer or any third party or by a misoperation by the Customer or any third party, the repair will be at the expense of the Customer.

J) The Company provides maintenance at three levels of service.

Maintenance Service A is provided upon request by the Customer within a 24 hour response.

Maintenance Service B is provided upon request by the Customer between the hours of 9.00am and 5.00pm Monday through to Friday. In addition a service is provided for a complete system failure on a Saturday between the hours of 9.00am and 5.00pm (excluding Bank and other Public holidays).

Maintenance Service C is provided upon request by the Customer between the hours of 9.00am and 5.00pm Monday through to Friday (excluding Bank and other public Holidays). Service outside the specified service level will be at the Customer's expense.

The Company shall use its best endeavours to respond to a request for Maintenance within 4 hours of receipt of the same if there is a complete system failure. In all other cases the Company shall use its best endeavours to respond to a request for Maintenance within 48 hours of receipt of the same. This timescale being dependent upon the service level.

k) In any case other than conditions b), c), d), e), g), h) and l) above, the repair will be at the expense of the Company.

l) When the Customer reports a fault in the Equipment the Company will respond with by;
i) providing advice by telephone (including where appropriate advice as to checks and tests to be carried out by the Customer); or
ii) where possible, carrying out diagnostic checks from the Company's premises; or
iii) when considered necessary by the Company visiting the Customer's premises where it has not been possible to diagnose or clear a fault in the Equipment using the procedures in l) and ii) above

m) Where replacement parts for any of the Equipment are provided by the Company any parts removed from the Equipment shall be the property of the Company.

n) In rectifying a fault to the Equipment it may be necessary for the Company to reset the Equipment software program. In such circumstances the Company will not be responsible for any resetting of the Customer's (or its employees') individual programming requirements.

o) The Company may (where repairs cannot be effected by component replacement) provide replacement Equipment (including, without limitation, assemblies and sub-assemblies, excluding telephones and handsets) PROVIDED THAT all details are recorded on the Company's engineers service report and acknowledged at the time of replacement by the signature thereon of the Customer or its representative, that any replacement by the signature thereon of the Customer or its representative, that any replacement Equipment shall be agreed by the Customer as a permanent replacement for the Equipment removed.

3. MAINTENANCE CHARGES

a) Subject as hereinafter mentioned all charges shall be payable in advance, the first annual maintenance charge to be made upon the Installation Date and subsequent annual maintenance charges to be made in advance on each anniversary of the Installation Date.

b) All VAT payable on the charges under this Agreement shall be paid by the Customer at the time of payment of such charges.

c) The Company reserves the right to adjust the Company's annual maintenance charges for payments falling due on or after the expiry of the first anniversary of the Installation Date by notification of the increase by invoice to the Customer at least one month before the adjustment is to take effect.

d) No work or maintenance shall be undertaken by the Company if at the time such work is requested the Customer has failed to pay any outstanding monies due to the Company.

e) All charges not paid within seven days of the due date shall bear interest from the due date at a rate of 15% per annum.

f) The Company shall be entitled to exercise a lien over any Equipment or other goods belonging to the customer in the Company's power, possession, custody or control as security for any charges or other monies due from the Customer to the Company whether or not invoiced.

4. MISCELLANEOUS

a) This Agreement may not be assigned by the Customer to any third party without the consent of the Company. Such permission is not to be unreasonably withheld and the assigning Customer hereby agrees to pay to the Company an assignment fee of £100.00 in respect of any such assignment. Upon assignment, this Agreement is deemed to cover the person taking the assignment from the Customer for the Minimum Period.

b) The Company shall not be liable for any delays to or failure to execute any work, or repair, replacement, alteration to, or removal of the Equipment due to any circumstances beyond the control of the Company and the Company's obligations in that behalf shall be suspended during any period of any such delay or failure beyond its control.

c) The Company may assign the benefit of or its rights under this Agreement.

d) Otherwise that where this Agreement covers Equipment covered by BSI regulations, the Company may subcontract any or all of its obligations covered by this contract to a third party without notifying the Customer.

e) All consumables required to enable the Company to rectify any defects in the Equipment including, without limitation, cassette tapes, print ribbons, toner, developer, paper and paper rolls

will be provided by the Company or its approved supplier at the expense of the Customer unless specified in this Agreement.

f) The Customer will promptly notify the Company of its intention to change the address at which the Equipment is installed. In the event that the Equipment is removed to another address the Company shall be relieved of its obligations under this Agreement where upon any outstanding liabilities of the Customer will become immediately payable to the Company PROVIDE THAT the Company shall be entitled to elect to continue to provide maintenance services in respect of such Equipment on the terms specified in condition g) below.

g) If the Equipment is moved to other premises and the Company elects to continue to provide maintenance services, the Company will be entitled to increase the maintenance charge payable under this Agreement, to cover any additional costs to the Company in providing maintenance services at the new location.

h) The Company shall be entitled to inspect the Equipment before accepting any request to undertake any maintenance obligations in respect of such equipment.

i) Any amendments to the terms of this Agreement will not be binding unless confirmed in writing by the Company Secretary of the Company prior to the Installation Date.

j) If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected thereby.

5. Termination

a) Notwithstanding anything else contained herein this Agreement may be terminated:

i) By the Company forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under the terms of this Agreement or any other Agreement between the Company and the Customer (otherwise than as a consequence of any default on the part of the Company) and such sum remains unpaid for 14 days after written notice from the Company⁷ that such sum has not been paid (such notice to contain a warning of the Company's intention to terminate); or

ii) By either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement (other than any failure by the Customer to make any payment hereunder in which event the provisions of paragraph i) above shall apply) and (in case of a breach capable of being remedied) shall have failed within 30 days after the receipt of a request in writing from the other party so to do to remedy the breach (such request to contain a warning of such party's intention to terminate); or

iii) By either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction; a court of competent jurisdiction shall make an order to the effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with his creditors or shall become bankrupt or shall cease or threaten to cease to carry on business.

b) Any termination of this Agreement howsoever occasioned shall not effect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

c) Upon the termination of this Agreement, for any reason otherwise than by the Customer in accordance with Clause 5 a) ii) above the Customer shall not be entitled to reimbursement of any pro rata part (calculated on a time basis) of any maintenance charge paid in advance.

d) Any notice required to be given hereunder shall be served by posting the same by first class recorded delivery post to the registered office of the party to be served (in the case of a Company) or to the installation address specified overleaf (in the case of an individual firm or partnership). Any notice served hereunder shall be deemed to have been received 48 hours after posting. In proving service by post it shall only be necessary to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this Clause.