

TERMS AND CONDITIONS

New England Communications (NEC) and you, the Customer, agree as follows:

1. CONTRACT PERIOD

This agreement shall be effective from the date of NEC's written acceptance until terminated as set forth in this agreement. Maintenance service shall commence on the expiration of the applicable warranty and be provided for an initial term as specified on the front of this agreement and shall be automatically renewed for successive one (1) year terms at the charges and under the terms and conditions in effect at the time of renewal.

2. COVERAGE

A. Maintenance service includes preventive and remedial maintenance as well as replacement parts required by products used under normal operating conditions. Coverage will be in accordance with the option you selected.

B. If you subsequently purchase products from NEC or request certification or connection of equipment similar to the products covered by maintenance under this agreement and co-locate those products with the existing ones, upon warranty expirations, those products will also be covered by maintenance under this agreement. Charges will be at the then current monthly rates and coverage will be coterminous with the existing products.

C. Coverage Periods- Maintenance Agreement

1. The coverage periods available for maintenance service are:

Coverage Period A - 8 a.m. to 5 p.m. Monday through Friday

Coverage Period B - 8 a.m. to 5 p.m. Monday through Saturday

Coverage Period C - 8 a.m. to 5 p.m. 7 days a week

Coverage Period D - 8 a.m. to Midnight. Monday through Friday

Coverage Period E - 8 a.m. to Midnight, Monday through Saturday

Coverage Period F - 8 a.m. to Midnight, 7 days a week.

Coverage Period G - 24 hours a day, Monday through Friday

Coverage Period H - 24 hours a day, Monday through Saturday

Coverage Period I - 24 hours a day, 7 days a week

2. Coverage periods A, B, D, E, G, and H are exclusive of holidays observed by NEC.

3. PRICE AND PAYMENT

You agree to pay the monthly maintenance charges for the initial term and the applicable charges for any renewal term. Where applicable, you may prepay the entire initial term of the contract at the price set forth on the agreement. Payment of invoices is due within thirty (30) days of the invoice date. You agree to pay any taxes, however designated (excluding taxes on NEC's net income), unless you provide NEC a certificate of exemption.

4. YOUR RESPONSIBILITY

Throughout the term of this agreement you shall:

- Follow all NEC installation, operation and maintenance instructions.
- Provide the NEC-specified environment and electrical and telecommunications connections.
- Provide access to the products to enable NEC to perform maintenance.
- Provide adequate communications facilities, work space and storage space for NEC spare parts.
- Have a representative available during any on-site NEC maintenance activity.
- Maintain a procedure external to the software program(s) and host computer for reconstruction of lost or altered files, data or programs to the extent you deem necessary.

5. EQUIPMENT/SOFTWARE RELOCATION, MODIFICATION, IMPROPER USE

A. You shall advise NEC promptly of any change in location or modification to any product covered by this agreement. If such change, in NEC's opinion, increases the cost of testing or repairs. NEC reserves the right to increase your monthly maintenance charge. If the change creates a safety hazard or is likely to cause product malfunctions, NEC may, with your concurrence and at your expense, correct the condition and continue to perform maintenance. If the condition cannot be corrected to NEC's satisfaction, NEC reserves the right to terminate maintenance under this agreement.

B. NEC shall be under no obligation to provide maintenance service of software if:

- The software program has been modified or moved without NEC's prior written approval.
- The original software program identification marks have been removed or altered.
- NEC does not support the system software (ie core operating system, system utilities and libraries, drivers, etc.)
- The host computer does not conform to the update level necessary to support the software or has been modified, other than by NEC personnel, so as not to conform to the specifications for which the software was designed.
- Your software does not conform to the software currently listed as software subject to maintenance support; or
- You are using the software program in violation of its license.

6. WARRANTY EXCLUSIONS

A. NEC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. Maintenance service does not cover repair for damages, malfunctions or service failures caused by:

- Actions of non-NEC personnel, due to customer access of the remote access line.
- Your failure to follow NEC installation, operation or maintenance instructions.
- Attachment of non-NEC equipment to the products
- Failure of products not maintained by NEC
- Abuse, misuse or negligent acts; or
- Force majeure conditions as stated in Section 9.

C. NEC may agree to perform maintenance services in the situations set forth in Sections 5B and 6B. Customer agrees additional charges may apply.

7. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION, NEC SHALL BE DEEMED TO INCLUDE NEC, ITS SUBSIDIARIES AND THEIR AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF ALL OF THEM; AND "DAMAGES" WILL REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS OR EXPENSE INCURRED.

B. NEC'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK OR SERVICE, REGARDLESS OF THE FORM OF ACTIONS, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

- FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY NEC, YOUR RIGHT TO PROVEN DAMAGES TO PROPERTY OR PERSON.
 - FOR NEC'S FAILURE TO PERFORM OR OBSERVE ANY MATERIAL TERM OR CONDITION OF THIS AGREEMENT, WHICH CONTINUES FOR THIRTY (30) DAYS AFTER NEC'S RECEIPT OF YOUR WRITTEN NOTICE, THE REMEDY STATED IN SECTION 8C.
 - FOR CLAIMS OTHER THAN SET FORTH ABOVE, NEC'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES WHICH ARE PROVEN, IN AN AMOUNT NOT TO EXCEED \$100,000.
- C. EXCEPT TO THE EXTENT PROVIDED IN SUBSECTION 7B1, NEC SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND, WHETHER OR NOT NEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. TERMINATION

A. Prior to the maintenance commencement date, you may cancel coverage and, if applicable, receive a full refund of any prepaid amount. After the maintenance commencement date, you may terminate coverage up on thirty (30) days written notice and payment of a termination charge. The termination charge is twelve (12) months or the full charges of the period remaining, whichever is less. For prepaid agreements, NEC will refund or credit the pro rata price of the remaining term less a termination charge as indicated above.

B. Either party may give the other written notice of termination of maintenance at least thirty (30) days in advance of maintenance coverage expiration.

C. If NEC fails to perform or observe any material term or condition of this agreement and such failure continues for thirty (30) days after NEC's receipt of your written notice, you may terminate without penalty.

D. If you fail to pay any charge when due and such payment is not received by NEC within (10) days after receipt of written notice or if you fail to perform or observe any other material term or condition of this agreement and such failure continues for thirty (30) days after receipt of written notice, you shall be in default and NEC may terminate this agreement and exercise any available rights. Upon termination by NEC, you shall be liable for any applicable charges, including termination charges.

9. FORCE MAJEURE

NEC shall have no liability for damages due to: fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbance, acts of civil or military authorities, or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, unauthorized use of the products, or other causes beyond NEC's control whether or not similar to the foregoing.

10. ASSIGNMENT

Neither party may assign this agreement without the prior written consent of the other party. Consent shall not be unreasonable withheld. NEC may assign this agreement to a present or future affiliate, subsidiary or successor or may assign its right to receive payment.

11. SUBCONTRACTING

NEC may subcontract any or all of the work to be performed under this agreement, but shall retain responsibility for the work.

12. GENERAL

A. Any supplement, modification or waiver of any provision of this agreement must be in writing and signed by authorized representatives of both parties.

B. If any portion of this agreement is found to be invalid or unenforceable, the parties agree that the remaining portions shall remain in effect. The parties further agree that in the event such invalid or unenforceable portion is an essential part of this agreement, they will immediately begin negotiations for a replacement.

C. If either party fails to enforce any right or remedy available under this agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other party.

D. The section headings in this agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this agreement.

E. Any legal action you bring against NEC with respect to this agreement must begin within one (1) year after the cause of action arises.

F. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LOCAL LAWS OF THE STATE OF MAINE.

G. THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, COMMUNICATIONS BETWEEN THE PARTIES AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.

Initial: _____

Date: _____