



1st Callcom Ltd Maintenance Agreement

Strowger House, Ravenshorn Way, Renishaw, Sheffield S21 3WY
Tel: 01246 439 800 **Fax:** 01246 436 832
Email: sales@1call.co.uk **Web:** www.1call.co.uk

Customer: _____	Ref: _____
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Customer Details	Billing Details if different
Contact: _____	Contact: _____
Tel: _____	Tel: _____
Address: _____ _____	Address: _____ _____
Postcode: _____	Postcode: _____
Email: _____	Email: _____

Equipment to be covered (System, Cards, Phones and Additional Equipment)				
Make	Model	Serial	Quantity	Aproximate Age

Number of Lines & Type:	_____
Number of Analogue Extensions:	_____
Number of Digital Extensions:	_____

Initial Period: _____ (years)	Initial Payment	£	(+VAT) £	TOTAL £
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Followed by: _____ (years)	Annual Payments of	£	(+VAT) £	TOTAL £
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IMPORTANT: Your maintenance contract is valid only on receipt of payment

Signature _____ Position _____

Print Name _____ Date _____

OFFICE USE ONLY:	
Signed for on behalf of 1st Callcom Ltd: _____	Print Name: _____
Date: _____	Commencement Date: _____

General Terms and Conditions

1. GENERAL

1.1 The terms and conditions in this contract are the sole terms and conditions of the contract between 1st Call Com Ltd, "1st Call" and the Customer. No variation or modification of these terms or conditions and no Agreement made, or purported to be made, between 1st Call and the Customer inconsistent with these terms and conditions shall be valid, or of any effect, unless made in writing and signed by a Director of 1st Call. No representation regarding the Equipment shall be deemed to be made by or on behalf of 1st Call, nor shall a representation bind 1st Call unless it is made in writing and signed by a Director of 1st Call.

1.2 If you give us fourteen prior days notice and we agree, you or your appointed agents may carry out alterations to the Equipment or extension wiring. We reserve the right to inspect such work and, if found by us to be unsatisfactory, we shall inform you and you will remedy the defect within seven days of the inspection. Unless explicitly authorised by 1st Call, any alterations, reconfiguration, reprogramming or movement of the Equipment will invalidate this Agreement.

1.3 We exclude from this Agreement any fault, defect or problem that in our opinion was present before the commencement of the Agreement. If we are informed of any problem before commencement we may exclude, include or insist on repair before cover takes effect, at our discretion. Other faults or problems directly or indirectly caused by items described above are also excluded from cover. Our decision on the cause of any fault in these or similar circumstances will be final.

2. OUR DUTIES

2.1 You engage us and we agree to provide and carry out only at the Installation Address during the Term the following Maintenance Services subject to the exclusion in clause 5 and 7 using reasonable skill and care:

2.1.1 We will maintain or procure the maintenance of the Equipment at the Installation Address shown overleaf in efficient working order during the Term.

2.1.2 We will use all reasonable endeavours to respond within 4 working hours for a major failure, or 16 working hours in all other cases (being 9.00am to 5.00pm Monday to Friday, excluding public holidays). We define a major failure as more than 50% loss of internal telephones, more than 50% loss of external lines, loss of main switchboard/operator's main telephone.

2.1.3 Our response to you under this contract may be made in several ways, either by telephone where the problem may be solved by simple procedures discussed by oral contact with our technical support operatives, by the operation of remote diagnostic equipment which enables the identification and rectification of faults by means of direct data connection between our computers and your telephone system, or by means of sending an engineer to your site.

2.1.4 If we are of the opinion that a problem is simple in nature and can be rectified by a brief telephone conversation and/or simple action upon the part of the client, we expect reasonable co-operation of the client in order to resolve the problem. We will not unreasonably withhold a service visit by an engineer but in circumstances where are denied reasonable co-operation and a visit proves the fault to be client error or could have been solved verbally, we reserve the right to make a charge.

2.1.5 We do not maintain any standard "2 wire" telephone devices unless specified explicitly on the contract. Replacement of faulty parts or telephones may be made with reconditioned items at our discretion. Exact replacements may not be available in the case of older equipment so replacements will be made using the nearest possible equivalent item.

2.1.6 We do not guarantee response within the times stated in 2.1.2 in every instance. Time to fault clearance after response time will be variable depending on the nature of the problem.

2.1.7 If faults are proven to lie on any public network connected to the client's equipment, we will make a report to the appropriate authority but can in no way accept any liability for the actions or inactions of the network provider or its agents.

3. YOUR DUTIES

3.1 You shall at all times:

3.1.1 Orally notify us immediately of any fault in the Equipment and/or repair necessary and promptly provide us with any information which we reasonably require to enable us to proceed uninterrupted with the performance of this Agreement.

3.1.2 Afford our staff and our other authorised personnel full and safe access to the Installation Address and the Equipment to enable us to carry out the Maintenance Services.

3.1.3 Provide us with, and be responsible for, the safety of such adequate free working space and facilities as may be necessary for the performance of the Agreement.

3.1.4 Comply with all statutory requirements (including those relating to health and safety) which apply to the Maintenance Services and institute safe systems of work at the Installation Address.

3.1.5 Promptly inform us about any facts or opinions of which you become aware which are likely to affect our obligations under this Agreement.

3.1.6 Keep the Equipment at the Installation Address.

3.1.7 Except as provided in clause 1.2 not to yourself maintain, service, repair, adjust, tamper, replace, alter or move the Equipment or the extension wiring.

3.1.8 Re-invoice to your network provider any abortive call invoices raised by 1st Call and when appropriate.

4. PAYMENT

4.1 The Maintenance Fee shall be due on the Commencement Date.

4.2 Payment on time is an essential condition of this Agreement which will not become valid until full payment is received.

4.3 We may (without prejudice to our other rights and remedies):

4.3.1 Suspend, entirely at our discretion, performance of any or all of the Maintenance Services if you are in default of your payment obligations under this Agreement, or any other invoice or amount due to 1stCallcom Ltd, and;

4.3.2 Charge you interest in respect of late payment of any sum due under this agreement on a day to day basis (both before and after any judgment) at the rate of 4% per annum above the base rate of National Westminster Bank Plc from the due date for payment to the date of actual payment (both dates inclusive). The interest shall be paid by you on demand.

4.4 Theft, loss of or destruction of or damage to the Equipment shall not affect your obligations under this clause.

5. WARRANTY AND LIABILITY

5.1 You acknowledge and agree that:

5.1.1 You are in a better position than we are to foresee and evaluate any potential damage or loss that you may suffer in connection with the Maintenance Services or any other service provided by us under this agreement. And:

5.1.2 The Maintenance Fee has been calculated on the basis that we will exclude or limit our liability as set out in clause 5.2 and 5.3 and 7.

5.2 Our total liability to you, whether directly to you or by reason of indemnity or contribution in respect of your liability to any third party, for any negligent acts or omissions of our employees, agents or sub-contractors resulting in damage to property shall be limited to £1 million:

5.2.1 In respect of fraud or dishonesty shall be limited to the return to you of up to the Maintenance Fee paid pro-rata to the date of the offence.

5.2.2 These limits of liability shall apply separately to each and every claim against us provided that where any one act or omission or series of two or more connected acts or omissions gives rise to more than one claim, the limits shall apply to the aggregate of all of the claims as though they were a single claim.

5.3 Notwithstanding anything else contained in this agreement, we shall not be liable to you for:

5.3.1 Any failure of the Equipment due to:

5.3.1.1 Use not in accordance with manufacturers' instructions, unauthorised repair, or use of accessories not authorised by 1st Call or reprogramming changes made by untrained or unauthorised personnel.

5.3.1.2 Foreign bodies, negligent use, wilful abuse or misuse.

5.3.1.3 Fire, flood, electrical storms, lightning, theft or act of God, operation of industrial motors, machinery, arc welding or high frequency bonding equipment close to the unit

or wiring. Note: damage to telephone systems is common during electrical storms and covered by clients' insurance. Such damage is therefore expressly excluded from this maintenance contract.

5.3.1.4 Any delay in the execution of any maintenance or installation works including replacement, alteration, removal or otherwise of, or to the Equipment, howsoever caused and any such delay shall not be sufficient cause for cancellation of this contract.

5.3.1.5 Any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or BT, Mercury or any other service providers' equipment, lines and/or host PBX systems.

5.3.1.6 Any damage caused by the failure of electrical supply to the Equipment.

5.3.1.7 In respect of accidental damage to the Equipment or to your property.

5.3.1.8 Economic loss including, but not limited to, loss of profits, revenues or goodwill (including any such loss or damage payable by you to a third party as a result of an action brought by a third party); or

5.3.1.9 Any other indirect or consequential loss (including any such loss or damage payable by you to a third party as a result of an action brought by a third party) even if the loss was reasonably foreseeable or we had been advised of the possibility of you incurring it and whether arising from negligence, breach of contract or of statutory duty or otherwise; or

5.3.2.0 Any claims which have not been notified to us within 30 days of the date on which you knew, or should have known, of the claims existence.

5.4 We also shall not be liable for any other contractors' invoices for works on the Equipment other than expressly authorised and ordered by a Director of 1st Call.

5.5 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

6. TERMINATION

6.1 This agreement may be terminated:

6.1.1 By either party giving to the other 30 days written notice prior to the commencement of the second or subsequent terms.

6.1.2 By us giving you 30 days notice and refunding the balance of any maintenance fee, if already paid.

6.1.3 Immediately if the other:

6.1.3.1 Being a company has a receiver or administrative receiver appointed, passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order, enters into any voluntary arrangement with your creditors or ceases or threatens to cease to carry on business.

6.1.3.2 Being a partnership (and whether in respect of the partnership or of any one or more of the partners) or an individual (i) is involved in any legal proceedings involving its solvency,

(ii) commits an act of bankruptcy or is adjudicated bankrupt or (iii) enters into any composition or other arrangement with its creditors generally (or any class of them) or (iv) has proposals submitted for an individual voluntary arrangement (v) has a receiver, administrative receiver or other creditors representative appointed over any of its assets or property or (vi) ceases or threatens to cease to carry on business.

6.1.3.3 Fails to pay on its due date any sum due under this Agreement.

6.1.3.4 Commits any material breach of any term of this Agreement (other than under clause 6.1.3.3) which, in the case of a breach capable of being remedied, is not remedied within 14 days of a written request to do so.

6.2 A termination under clause 6.1 shall discharge us from liability for further performance of this agreement and shall entitle us to enter the Installation Address or any of your premises and recover any Equipment and materials which are our property (and so that you irrevocably license us, our employees and agents to enter the Installation Address or premises for that purpose).

6.3 Termination of this Agreement shall not affect any accrued rights or liabilities of either party or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

6.4 Early termination will leave the maintenance fees due for the remainder of the current term outstanding and payable on demand less 25% early settlement discount.

7. FORCE MAJEURE

7.1 We shall have no liability to you, or be deemed to be in breach of this Agreement, as consequence of any of the following events:

7.1.1 Flood, storm, severe weather conditions or other natural event.

7.1.2 War, terrorist action, hostilities, revolution, riot or civil disorder.

7.1.3 Any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment or materials (including any computer hardware or software or any records).

7.1.4 The introduction of, or any amendment to, a law or regulation, or any change in your interpretation or application by any authority.

7.1.5 Any strike, lockout or other industrial action.

7.1.6 Any obstruction of any public or private highway or road or any event which prevents or obstructs access to the site.

7.1.7 Any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor).

7.1.8 Any other event outside our reasonable control, whether similar or not to any of the foregoing.

8. INVALIDITY OR SEVERABILITY

8.1 If any provision of this agreement is found by any court of administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

9. WAIVER

9.1 No delay or indulgence by either party in enforcing this agreement shall prejudice or restrict the rights of that party. A waiver of your right shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

10. WARRANTY

10.1 You warrant to us that you have not been induced to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained in this agreement, and you waive any claim for breach of prior presentations.

11. ASSIGNMENT

11.1 You shall not transfer this agreement or any of your rights and obligations under it in any circumstances whether in whole or in part, without first obtaining our prior written consent.

12. OBSOLESCENCE

After the maintained equipment has attained the age of 7 years, maintenance will continue for as long as spares are readily available. We will give at least 1 year notice before spares become unavailable. After 7 years, total failure of the system main equipment will be deemed beyond fair wear and tear and will not be replaced free of charge. A minimum 10% allowance will be made against the cost of replacement with new if required.

13. NOTICES

13.1 All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the recipient set out in this agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

14. HEADINGS

14.1 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

14.2 This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.