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Perle Maintenance Agreement

EMEA

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This Maintenance Agreement applies to Perle Products serviced in **Europe, the Middle East and Africa**. Products covered include:

- All Perle Serial Server products and Perle developed software.
- All Perle Console Server products and Perle developed software.
- All Perle Router products and Perle developed software.
- All Perle 594 and 394 Series products and Perle developed software.
- All Perle 833 Series products and Perle developed software.
- All Perle Model 3i and M3PC products and Perle developed software.
- All Perle Print Server products and Perle developed software.

AGREED TERMS

1 Service Definitions

In the Agreement terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

"the Hardware"

means the computer hardware specified in the Schedule and such additions and changes thereto as shall from time to time be agreed in writing between the parties

"the Location"

means the Customer's location at which the Hardware and/or Software is installed as specified in the Schedule

"the Commencement Date"

means the date on which the Agreement shall become effective as specified in the Schedule

"the Initial Period"

means the initial period of the Agreement as specified in the Schedule

"the Hardware Maintenance Services"

means the maintenance services to be provided by Perle in respect of the Hardware pursuant to clause 2

"the Software Support Services"

means the support services to be provided by Perle in respect of the Software pursuant to clause 3

"the Maintenance Charges"

means the periodic charges for the Maintenance and Support Services specified in the Schedule as increased from time to time pursuant to Clause 4

"the Software"

means the operating computer software specified in the Schedule and such additions and changes thereto as shall from time to time be agreed in writing between the parties

"the Maintenance and Support Services"

means the Hardware Maintenance Services and/or the Software Support Services

"Authorised Service Centre"

means a centre which has been authorised by Perle to provide maintenance and support services in respect of the Hardware or Software

"Current Release"

Means the most recent revision of the Software that is made available at no additional charge to the customer

"Year"

Means the period of one year from the Commencement Date and each subsequent period of one year during the currency of this Agreement.

2 Hardware Maintenance Services

During the currency of this Agreement Perle will provide (subject to clause 5) one of the following categories of maintenance services in respect of any defects in the Hardware which are reported by the Customer pursuant to Clause 2.5. The level of service provided will be as specified in the Schedule

2.1 EXPRESS REPLACEMENT (ER) - [Check Availability](#)

2.1.1 Express Replacement maintenance agreements purchased with a new Perle product becomes valid upon acceptance of the customers [web site registration](#).

2.1.2 Express Replacement maintenance agreements purchased on a used Perle product becomes valid 30 days after the acceptance of the customers [web site registration](#).

2.1.3 When a defect or problem is notified by the Customer to Perle by telephone under clause 2.5 Perle will initially attempt to diagnose the problem over the telephone in order to ascertain whether it is a defect in the Hardware. If it is diagnosed as a defect in the Hardware which is covered under this Agreement Perle will deliver to the Customer at the Location modular parts or replacement Hardware on an exchange basis. These will be delivered by express service and Perle will pay all transport and delivery costs

2.1.4 The Customer will be responsible at its cost for returning the Hardware requiring the maintenance services to the Authorised Service Centre. The Customer will ensure they are packaged in the packaging received with the replacement parts or Hardware and that such packaging is clearly marked with the RMA code provided by Perle.

2.1.5 If the Customer fails to return the Hardware requiring maintenance services to the Authorised Service Centre within a 15 day period, Perle reserves the right to charge the Customer for the replacement parts or Hardware supplied by Perle at Perle's current list prices at that time and the Customer agrees to pay such amount within 14 days of receipt of Perle's invoice

2.1.6 Hotline technical support is available free of charge between 9am and 5pm GMT to anyone with a valid Express Replacement maintenance agreement

2.2 ON SITE 8 x 5 (OS5) - [Check Availability](#)

2.2.1 On-Site maintenance agreements purchased with a new Perle product becomes valid 10 days after acceptance of the customers [web site registration](#). If repair is needed during the first 10 days a replacement unit will be shipped by express service.

2.2.2 On-Site maintenance agreements purchased on a used Perle product becomes valid 30 days after the acceptance of the customers [web site registration](#).

2.2.3 When a defect or problem is notified by the Customer to Perle by telephone under clause 2.5 Perle will initially attempt to diagnose the problem over the telephone in order to ascertain whether it is a defect in the Hardware. If it is diagnosed as a defect in the Hardware which is covered under this Agreement then Perle will provide a repair service in respect of defects in the Hardware by attendance at the Location.

2.2.4 If a defect in the Hardware is diagnosed then Perle will use its reasonable endeavours (subject to clause 2.2.5) to ensure that a service technician arrives at the Location within 4 Working Hours following such diagnosis or such other number of Working Hours as may be specified in the Schedule.

2.2.5 For the purposes of clause 2.2.4 "Working Hours" will be Monday to Friday between 9.00am and 5.00pm (excluding public holidays).

2.2.6 Upon arrival at the Location Perle will use its reasonable endeavours to repair the defect in the Hardware.

2.2.7 If there is a defect in a Perle cable or diskette Perle will replace the component under the Express Replacement service referred to in clause 2.1 and will not service the component at the Location

2.2.8 If a representative of the Customer is not present at the Location at the scheduled time of arrival of the service technician Perle will have the option of refusing to provide On Site services in respect of the defective Hardware and instead elect to provide Express Replacement services under the terms of clause 2.1.4

2.2.9 Hotline technical support is available free of charge between 9am and 5pm GMT to anyone with a valid On-Site 5x 8 maintenance agreement

2.3 ON SITE 24 x 7 (OS7) - [Check Availability](#)

2.3.1 Perle will provide a repair service in respect of defects in the Hardware by attendance at the Location on identical terms to those set out in clause 2.2 with the exception that Perle will use its reasonable endeavours to ensure that a service technician arrives at the Location within 4 Normal Hours following diagnosis or such other period as may be specified in the Schedule.

2.3.2 For the purposes of clause 2.3.1 "Normal Hours" will be 24 hours per day, 7 days per week and 365 days per year.

2.3.3 Hotline technical support is available free of charge between 9am and 5pm GMT to anyone with a valid On-Site 7x 24 maintenance agreement

2.4 In the case of each level of service under this clause 2 Perle will at its option either repair or replace the defective Hardware or part thereof. Any replacement Hardware or part thereof provided by Perle may be new, reconditioned or used at Perle's discretion.

2.5 In order to obtain the benefit of the relevant Hardware Maintenance Services the Customer must request the maintenance services by calling the [Perle Technical Assistance Centre](#).

Perle Product Line	United Kingdom	Ireland	EU member countries, Switzerland and Norway
Perle 2 and 4 port IOLAN/JetStream Serial Servers	ER	ER	ER
Perle 8, 16 and 24 port IOLAN/JetStream/LanStream Serial Servers	ER, OS5, OS7	ER, OS5	ER
Perle CS9000 Console Servers	ER, OS5, OS7	ER, OS5	ER
Perle Print Servers	ER	ER	ER
Perle 833 Remote Access Servers	ER, OS5, OS7	ER, OS5,	ER
Perle 833IS/AS Remote Access Servers	ER, OS5, OS7	ER, OS5	ER
Perle P800 Routers and LinkStream	ER	ER	ER
Perle P1700/P2600 Routers	ER, OS5, OS7	ER, OS5	ER
Perle 594e/T, 494 and 394 Controllers	ER, OS5, OS7	ER, OS5	ER
Perle 594M, Model 3i and M3PC	ER	ER	ER

3 Software Support Services

During the currency of this Agreement Perle will provide the following support services in respect of the Software.

3.1 SOFTWARE PROTECTION

3.1.1 Perle will provide access through its web site to new releases of the Software

3.2.2 Perle will use its reasonable endeavours to correct any re-creatable defects in the Software which are notified to it by the Customer within such reasonable time period as may be designated by Perle

3.2.3 A defect will only be considered to be re-creatable if the Customer submits sufficient documentation to enable the Perle to reproduce and verify the defect.

4 Charges

4.1 In consideration of the provision by Perle of the Maintenance and Support Services the Customer will pay the Maintenance Charges in accordance with the payment terms specified in the Schedule. The Maintenance Charges will be paid without prior demand and no payment shall be considered made until it is received by Perle.

4.2 Any charges payable by the Customer hereunder in addition to the Maintenance Charges shall be paid (unless otherwise provided elsewhere in these terms and conditions) within 14 days after receipt of Perle's invoice therefor

4.3 The Maintenance Charges will automatically increase at the commencement of each Year of this Agreement by 5 percent and Perle shall not be required to give the Customer notice of this increase. Perle shall be entitled to increase the Maintenance Charges at the commence of each Year of this Agreement by a percentage greater than 5 percent on giving the Customer not less than 90 days notice of the proposed increase. Provided that such notice is given the increased Maintenance Charges will apply as from the commencement of the relevant Year.

4.4 The Maintenance Charges and any additional charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

5 Exceptions

5.1 The Hardware Maintenance Services do not include any maintenance or repairs of the Hardware which is necessitated as a result of any cause other than fair wear and tear or Perle's neglect or fault including without limitation:

5.1.1 failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or

5.1.2 improper installation, accident, transportation, neglect, misuse or default of the Customer its employees or agents or any third party; or

5.1.3 any fault in any attachments or associated equipment (whether or not supplied by Perle) which do not form part of the Hardware; or

5.1.4 act of God, fire, flood, war, act of violence, or any other similar occurrence; or

5.1.5 any attempt by any person other than Perle's personnel to adjust, repair or maintain the Hardware

5.2 The Hardware Maintenance Services do not include:

5.2.1 repair or renewal of tapes, disk packs, printing cartridges or other consumable supplies;

5.2.2 maintenance or support of the operating system of any computer;

5.2.3 electrical or other environmental work external to the Hardware;

5.2.4 maintenance of any attachments or associated equipment which do not form part of the Hardware; or

5.2.5 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Hardware

5.3 The Software Support Services do not include any support services in respect of:-

5.3.1 any defects or errors in the Software resulting from any modification of the Software made by any person other than Perle; or

5.3.2 use of any version of the Software other than the Current Release; or

5.3.3 incorrect use of the Software or operator error; or

5.3.4 any fault in the Hardware or in any programs used in conjunction with the Software;

6 Service Visits Outside the Maintenance Services

Perle shall make an additional charge, in accordance with its standard scale of charges for the time being in force, for any maintenance services provided in respect of the Hardware or support services provided in respect of the Software:

6.1 made at the request of the Customer by reason of any fault in the Hardware or Software due to causes not covered by the Maintenance and Support Services; or

6.2 made at the request of the Customer but which Perle finds are frivolous or not necessary

7 Duration

Subject to earlier termination under clause 9 Perle will provide the Maintenance and Support Services from the Commencement Date for the Initial Period as specified in the Schedule.

Perle will continue to provide the Maintenance and Support Services after the Initial Period until the provision of such services is terminated by either Perle or the Customer giving the other party not less than 2 months notice of termination expiring at the end of the Initial Period or at the end of any Year of this Agreement

8 Customer's Obligations

During the continuance of the Agreement the Customer shall:

Use and care of the Hardware

8.1 ensure that proper environmental conditions are maintained for the Hardware and shall maintain in good condition the accommodation of the Hardware, the cables and fittings associated therewith and the electricity supply thereto

8.2 not make any modification to the Hardware without Perle's prior written consent

8.3 keep and operate the Hardware in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Hardware

8.4 ensure that the external surfaces of the Hardware are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time

8.5 save as aforesaid, not attempt to adjust, repair or maintain the Hardware and shall not request, permit or authorise anyone other than Perle to carry out any adjustments, repairs or maintenance of the Hardware

8.6 use on the Hardware only such operating supplies as the manufacturer shall recommend in writing

8.7 not make any movement of the Hardware nor remove the Hardware from the Location without Perle's prior written consent

8.8 not use in conjunction with the Hardware any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by Perle

Use of the Software

8.9 use only the Current Release of the Software

8.10 ensure that the Software is used in a proper manner by competent trained employees only or by persons under their supervision

8.11 keep full security copies of the Software and of its data bases and computer records in accordance with best computing practice

8.12 not alter or modify the Software in any way nor permit the Software to be combined with any other program to form a combined work

8.13 not request, permit or authorise anyone other than Perle to provide any maintenance services in respect of the Software

8.14 co-operate fully with Perle's personnel in the diagnosis of any error or defect in the Software

Access

8.15 provide Perle with full and safe access to the Hardware and Software

8.16 provide adequate working space around the Hardware and Software for the use of Perle's personnel and shall make available such reasonable facilities as may be requested from time to time by Perle for the storage and safekeeping of test equipment and spare parts

8.17 ensure in the interests of health and safety that Perle's personnel, while on the Customer's premises for the purposes, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures

Notification and information

8.18 promptly notify Perle if the Hardware and Software needs maintenance or is not operating correctly.

8.19 make available to Perle free of charge all facilities and services reasonably required to enable Perle to perform the Maintenance and Support Services

Miscellaneous

8.20 provide such telecommunication facilities as are reasonably required by Perle for testing and diagnostic purposes at the Customer's expense

9 Termination

9.1 Notwithstanding anything else contained herein this Agreement may be terminated:

9.1.1 by Perle forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under these terms and conditions and such sum remains unpaid for 14 days after written notice from Perle that such sum has not been paid (such notice to contain a warning of Perle's intention to terminate); or

9.1.2 by either party forthwith on giving notice in writing to the other if the other commits any material breach of any provision of this Agreement (other than any failure by the Customer to make any payment hereunder in which event the provisions of paragraph 9.1.1 above shall apply) and (in the 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

9.1.3 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) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business

9.2 Any termination of this Agreement howsoever occasioned shall not affect 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

9.3 If this Agreement is terminated by the Customer under clause 9.1 then Perle will repay to the Customer the proportion of any Maintenance Charges already paid by the Customer which relates to the period following termination calculated on a pro rata basis. If this Agreement is terminated by Perle under clause 9.1 then Perle will not be required to repay any part of the Maintenance Charges.

10 Confidentiality

10.1 Each party shall treat as confidential all information obtained from the other and shall not divulge such information to any party (except to such party's own employees and then only to those employees who need to know the same) without the party's prior written consent provided that this clause shall not extend to information which is already public knowledge or becomes so at a future date (otherwise then as a result of a breach of this Clause) or which is trivial or obvious. Each party shall take all reasonable steps to ensure that its employees are aware of and comply with the provisions of this Clause. The foregoing obligation of confidentiality shall survive any termination of this Agreement

11 Force Majeure

Neither party shall be liable for any delay in performing or any failure to perform any of its obligations hereunder to the extent that such delay or failure is caused by circumstances

beyond its reasonable control including without limitation acts of God, transportation delays, strikes, governmental action, adverse weather conditions, or inability to obtain materials or services from suppliers.

12 Warranty

12.1 Perle warrants to the Customer that it will perform its obligations under the Agreement with reasonable skill and care

12.2 The provisions of clause 12.1 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 hereby excluded to the fullest extent permitted by law

13 Liability

13.1 Notwithstanding anything else contained in this Agreement Perle shall not be liable to the Customer for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever suffered by the Customer even if Perle has been advised of the possibility thereof and whether arising from negligence, breach of contract or howsoever

13.2 Perle will not be liable to the Customer for any claims, liabilities, damages, losses or expenses incurred by the Customer resulting from any negligence on the part of Perle or its employees or agents in connection with the provision of the Maintenance and Support Services.

13.3 Perle will not be liable for any loss arising out of any failure by the Customer to keep full and up to date security copies of its data and the computer programs it uses in accordance with best computing practice

13.4 The provisions of clause 12 and 13 states the entire liability of Perle whether in contract, tort or otherwise in relation to the provision by Perle of the Maintenance and Support Services pursuant to these terms and conditions

14 Waiver of Remedies

No forbearance, delay or indulgence by either party in enforcing the Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative

15 Entire Agreement

This Agreement supersedes all prior representations, understandings, agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereto; Neither party has relied on any representation (written or oral) not set out or referred to in this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties

16 Assignment and Sub Contracting

16.1 The Customer will not be entitled to assign or otherwise transfer this Agreement or any its rights and obligations hereunder whether in whole or in part without the prior written consent of Perle

16.2 Perle will be entitled to assign or otherwise transfer this Agreement or sub-contract any of its rights and obligations under this Agreement without the consent of the Customer.

17 Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class prepaid 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 dispatched.

18 Law

The Agreement and these terms and conditions shall be governed by and construed in accordance with the laws of England

19 Disputes

Any dispute which may arise between the parties concerning the Agreement shall be determined by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that Court for such purpose