

Independent Communication Advisors  
Terms & Conditions

Products to Improve  
Performance



## 1. DEFINITIONS

1.1 In these Conditions the following terms shall have the following meanings:-

**"Additional Charges"** means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied.

**"Annual Minimum Call Spend"** means the minimum annual sum of money as set out on the Order Form that will be spent by the Customer on call charges commencing on the Connection Date or any anniversary thereafter during the term of the Contract;

**"Annual Support Charge"** means the support charge for the Maintenance Services as set out on the Order Form;

**"Business Day"** means any and all days between Monday and Friday in any week but excluding English bank or public holidays;

**"Carrier"** means the relevant third party public telecommunications operator or third party network service provider;

**"Charges"** means the charges payable by the Customer for Services as set out on the Order Form or in the relevant Tariff;

**"Commencement Date"** means the commencement date for the Minimum Term of the Maintenance Services (where applicable) being the date of Delivery of the relevant Equipment or such other date as specified in the Order Form or as otherwise agreed in writing between the parties;

**"Company"** means ICA a company registered in England and Wales Registration No 3806568 whose registered office is Glencroft House, Vale road, Heaton Mersey, Stockport SK4 3QR. Vat reg no. 727085231 and the expression "Company" includes the Company's permitted assigns employees and agents;

**"Connection Date"** means the date when the Carrier having received the relevant information from the Company is in a position to and has agreed to commence provision of the Network Services to the Customer;

**"Contract"** means the agreement between the Customer and the Company for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions incorporated into the Contract in accordance with condition 2.1;

**"Customer"** means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that company's authority and includes where relevant the Customer's permitted assigns employees and agents;

**"Delivery"** means the point that the Equipment arrives at the Customer's premises.

**"Equipment"** means the equipment and/or software related products to be supplied under the Contract as set out in the Order Form (and also has extended meanings under condition 5.4.2 and condition 6 in the case of and for the purposes of those conditions only);

**"General Conditions"** means the general conditions of entitlement set out in the notification issued by the Director General For Telecommunications on 22 July 2003, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said act, as may be amended from time to time;

**"Installation"** means the physical installation of Equipment at the Customer's Sites; "Installation Services" means services relating to the supply and Installation of Equipment (where applicable);

**"Minimum Term"** means the minimum contract period applying to each of the Services commencing on the Commencement Date or the Connection Date with regard to Network Services (as the case may be) and expiring on the day at the end of the minimum period set out in the Order Form;

**"Network Services"** means the network services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

**"Normal Working Hours"** means 9am to 5.00pm on any Business Day;

**"Order Form"** means the order form overleaf which sets out the details of the order, including (without limitation) the Customer's details and the Equipment and/or Services to be supplied under the Contract, and constitutes the Customer's order;

**"Price"** means the price for the Equipment and Installation Services (where applicable);

**"Services"** means any of the services supplied by the Company including, without limitation, the Installation Services, the Network Services and the Maintenance Services (as applicable);

**“Service Specific Conditions”** means any additional terms and conditions which are to apply to the Contract as specified in the Order Form or these Conditions in respect of specific Services, for example (and without limitation) the Broadband Acceptable Use Policy;

**“Site”** means a place of business at which the Services and/or Equipment are to be provided as specified in the Order Form;

**“Tariff”** means the Company’s tariff for each of the Services which may be varied from time to time;

## **2. CONTRACT FORMATION**

2.1 The details recorded on the Order Form, together with these Conditions referred to as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties and any such Contract shall be conditional only upon the credit status of the Customer being to the satisfaction of the Company (in its sole discretion) and, in respect of Network Services, the conditions set out in condition 5.2.1 being met.

2.2 All quotations and tenders are given and contracts are made by the Company subject to and only upon these Conditions, which cannot be varied, unless previously agreed in writing by the Company and these Conditions supersede and override all other terms and conditions appearing elsewhere including any terms and conditions of the Customer and any course of dealing established between the Company and the Customer.

2.3 In the event of a conflict between these Conditions, and the Order Form, the Order Form will prevail in respect of the relevant Service.

2.4 Any illustrations, samples or descriptive material, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise.

2.5 No variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised sales staff) will be accepted by the Company unless authorised by notice in writing by a Director of the Company.

2.6 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.6) be deemed a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Services or any other contract entered into under these Conditions.

## **3. CUSTOMER’S ORDER AND SPECIFICATIONS**

3.1 The Customer shall be responsible for providing the Company with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable the Company to duly perform the Contract.

3.2 Without limitation to the generality of condition 3.1, the Customer shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or the supply of any Services (as the case may be) by the Company are accurate and fully describe the Customer’s requirements and the Customer shall be liable in respect of any liability, loss, injury, damage, demand, claim, cost charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto.

#### **4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that the section related to Equipment is completed on the relevant Order Form, this condition 4 shall apply to the Contract.

##### **4.1 DELIVERY**

4.1.1 In consideration of payment of the Price pursuant to condition 9.1 the Company shall take reasonable steps to deliver the Equipment and where applicable supply the Installation Services within an estimated period for delivery.

4.1.2 Without prejudice to the generality of condition 3, the Customer shall be responsible for providing the Company with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by the Company to the Customer.

4.1.3 If the Customer fails to take delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the delivery of any Equipment is delayed for more than twenty-eight days the Company reserves the right to return the equipment at the cost to the customer.

4.1.4 If the Contract provides for Delivery by installments delay in the Delivery of any installment shall not entitle the Customer to treat the Contract as at an end or to reject any other installment.

4.1.5 If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.3 then payment shall be made by the Customer to the Company of the balance of the Price within seven days of such deemed delivery date.

##### **4.2 CONNECTION**

4.2.1 The responsibility for the cost of connection to the public switch network and/or the provision of additional lines to the public telephone system lies with the Customer.

4.2.2 The Customer shall ensure that a suitable earthed mains electricity supply of 240v to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment within 3 metres of such pieces of Equipment.

4.2.3 The Customer shall prepare the Site(s) in accordance with the Company's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s).

##### **4.3 PROPERTY AND RISK**

4.3.1 The Equipment shall be at the Customer's risk from the moment of Delivery or deemed Delivery(as described in condition 4.1.3) whether or not property in the Equipment has passed or payment or part payment made therefore, and thereafter the Customer shall be responsible for insuring the Equipment.

4.3.2 Notwithstanding Delivery and the passing of risk, the property in the Equipment supplied under the Contract shall not pass to the Customer until the Company has received in cash or cleared funds payment in full for the Equipment and Installation Services.

4.3.3 Until such time as the property in the Equipment has passed to the Customer, the Customer shall hold such Equipment as the Company's fiduciary agent and bailee, and keep such Equipment properly stored, protected and insured and identified as being the Company's property until title passes.

4.3.4 Until such time as the property in the Equipment passes to the Customer the Company shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to the Company to its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and repossess such Equipment.

##### **4.4 LIABILITY FOR REPLACEMENT OR REPAIR**

4.4.1 Subject to the following sub-clauses of this condition 4.4, the Company shall, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the later event, at its option and without cost to the Customer either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacturer.

4.4.2 Where the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for repair, replacement, renewal shall be transferred to the relevant third party maintenance provider on Delivery, subject only to the Company's liability in respect of defects arising on or

before Delivery of the Equipment provided that the Customer notifies the Company within three Business Days of Delivery in accordance with condition 4.4.1.

4.4.3 Where the Company is to supply Maintenance Services in respect of the relevant Equipment under the Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

4.4.4 The liability of the Company shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Company by the Customer prior to entering into the Contract, and in particular shall not apply to defects which arise from the Customer's neglect, misuse, faulty maintenance or from alterations carried out without the prior written consent of the Company or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

4.4.5 Any repaired or new parts will be delivered by the Company to the Customer free of charge.

4.4.6 The Company reserves the right to charge on a quantum merit basis for the costs of repairs and/or call-outs where the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer.

4.4.7 Neither acknowledgement of receipt nor investigation by the Company of any claim hereunder or consent given hereunder shall constitute or imply admission by the Company of any liability in respect of such claim.

#### 4.5 TRADEMARKS AND BRANDING

4.5.1 The Company shall be entitled to fix to any Equipment legends bearing the Company's and/or its third party supplier's name and/or trademarks or other marks ("Marks")

4.5.2 The Customer shall ensure that no Marks affixed to the Equipment are removed or defaced at any time.

## 5. NETWORK SERVICES

In the event that the section(s) relating to Network Services is completed on the relevant Order Form, this condition 5 shall apply to the Contract.

5.1 DURATION. Subject to earlier termination under condition 13 or as otherwise stated in this condition 5:

5.1.1 The Network Services will commence on the Connection Date and continue for the Minimum Term as set out in the Order Form.

5.1.2 Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract will renew automatically for further periods of 12 months.

5.1.3 The Customer may terminate the Contract by giving no less than three (3) months notice in writing to the Company, such notice to become effective no earlier than the day after the last day of the Minimum Term.

#### 5.2 SUPPLY OF NETWORK SERVICES

5.2.1 Any order for Network Services which is accepted by the Company pursuant to condition 2.1 is conditional on the following:

(a) the Company carrying out a survey which reveals to the Company's satisfaction that it is possible for the Company to supply the Network Services and that any details or information used by the Company to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey; and

(b) that the Network Services can be provided, and the Company makes no warranty that the Network Services can be provided until lines have been installed and are operational.

5.2.2 The Company undertakes to use reasonable endeavours to supply the Network Services to the Customer and to provide the Network Services with due skill and care as and from the Connection Date subject to these Conditions. The Customer acknowledges that the Network Services cannot be provided fault free and the Company does not warrant error free or uninterrupted use of the Network Services. Notwithstanding any other provision of these Conditions, the Company shall not be liable to the Customer

in contract, tort, or otherwise for any acts or omissions of Carriers which affect or otherwise impact the Network Services.

5.2.3 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Network Services the Company will use reasonable endeavours to rectify the fault as soon as practicable.

5.2.4 The broadband element (if any) of any Network Services does not include any modems or other equipment that the Company may supply to the Customer under a separate contract.

5.2.5 The speed of any broadband element (if any) of the Network Services depends on a number of factors including distance from the exchange, local availability and line test. The Company cannot guarantee that the Customer's line(s) will produce top speeds of up to the maximum speed advertised as the final speed is governed by factors that are beyond the Company's reasonable control.

### 5.3 SUPPLY OF TELEPHONE NUMBERS

5.3.1 The Customer hereby acknowledges and accepts that under the General Conditions the Director General has the power to withdraw an allocation of telephone numbers and the Carrier may withdraw an allocation of telephone numbers to the Company and therefore any new telephone numbers provided to the Customer under the Contract prior to their connection cannot be guaranteed as available and therefore the Company shall not be liable for any costs incurred by the Customer in the use of such telephone number (including, without limitation, in the advertising of such telephone number).

5.3.2 The Customer acknowledges it does not own or have any right to sell any number provided to it by the Company.

### 5.4. USE OF THE NETWORK SERVICES

5.4.1 The Customer shall be responsible for the safe custody and safe use of the Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:

(a) to use the Network Services in accordance with such conditions as may be notified to it in writing by the Company from time to time;

(b) not to cause any attachments other than those that meet the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) or any other requirements under the General Conditions to be connected to the Network Services and the Company shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of the Company it is liable to cause death, personal injury or damage or to impair the quality of the Network Service;

(c) not to contravene the General Conditions or any other relevant regulations or licences granted there under;

(d) not to use the Network Service as a means of communication for a purpose other than that for which the Network Service is provided and as may be set out in any relevant literature supplied by the Company from time to time;

(e) not to use the Network Service to communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Network Services;

(f) not to use the Network Service in a manner which constitutes a violation or infringement of the rights of any other party;

(g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals for the item as from time to time applicable;

(h) to provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;

(i) to implement adequate control and security over the Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any calls generated by rogue diallers or hackers;

(j) not to use the Network Services in a way that breaches any legislation or regulation.

(k) not to send or procure the sending of any unsolicited advertising or promotional material.

5.4.2 Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Network Service (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer for which condition 4 applies) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. The Customer shall be liable to the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment.

5.4.3 The Customer is committed to using the Company for both line rental and calls. Should the Customer use an alternative carrier for calls once the Contract has commenced, or prevent the Company from carrying calls in any monthly period so that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that the Company may charge the Customer the differential between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).

5.4.4 The Network Services are provided solely for the Customer's use and the Customer's cannot resell or attempt to resell the Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.

5.4.5 The Company does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and any other materials (in whatever form) and services made available to the Customer as part of the Network Services.

5.4.6 The Content is protected by copyright, trademark and other intellectual property rights, as applicable. The Customer must not and must not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.

5.4.7 The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet.

5.4.8 The Customer warrants, represents and undertakes that any information the Customer makes available on their website, both the Customer's ("Customer Information") or that of a third party ("Third Party Content") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

5.4.9 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by the Company to the Customer.

5.4.10 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Network Services and the Customer consents to the Company co-operating with any other telecommunications operators in connection with any suspected fraudulent activity related to or connected with the Network Services and agree that the Company will be entitled to divulge the name and address and account information relating to the Customer to such third parties.

5.4.11 The Customer acknowledges that the broadband element (if any) of the Network Services is provided to other users and the Company owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation the Company may change the Customer's chosen access rate or manage the Customer's Services as the Company sees fit in the circumstances.

5.4.12 The Company gives no warranties whatsoever that such technology will be effective in any way, including against unsolicited emails or against any viruses, worms, Trojan horses or other programs or devices that are apparently intended to access and modify, delete or damage data file(s) or computer program(s).

5.4.13 In order to use the broadband element (if any) of the Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer (PC) of a minimum specification suitable for the application. The Customer must also ensure that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.

5.4.14 In circumstances where the Customer receives the broadband element of the Network Services, the Customer remains responsible for all rental charges made by the Customer's line rental provider relating to the Customer's telephone line (together with any repair and maintenance charges (unless caused by the Company's negligence) and all call charges from the Customer's fixed line telephony service provider.

5.4.15 The Customer will not misuse the Network Services in any way and will use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Customer's capability to answer such calls or cause congestion.

#### 5.5 TRANSFER FROM THIRD PARTY SUPPLIERS

5.5.1 Where the transfer of lines and services from third party suppliers is selected by the Customer then the provision of any and all existing services supplied to the Customer by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Tariff.

5.5.2 The Customer hereby acknowledges and accepts that it is the Customer and not the Company who is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Customer signing such Order Form that the Company will pay for specified charges.

5.5.3 If the Customer is migrating to the broadband element of the Network Services from a third party provider of an alternative broadband service, the Customer will need to obtain a Migration Authorisation Code ("MAC") from that service provider. This MAC will be valid for thirty days from the date of issue and can only be used once. It is the Customer's responsibility to obtain this code and to ensure that the Customer provides it to the Company in sufficient time to process the Customer's migration. The Company will not be responsible for any delay, costs, expenses, loss or damage arising or incurred by the Customer through failure to connect the Customer to the broadband element of the Network Services.

#### 5.6 SUSPENSION AND/OR TERMINATION OF NETWORK SERVICES

5.6.1 Without prejudice to any other right of the Company to suspend or terminate the Services under these Conditions, the Company may at its sole discretion elect to suspend forthwith provision of the Network Services until further notice without further liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

(a) the Customer is in breach of a material term of these Conditions including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company on the due date or to comply with the Broadband guidance.

(b) the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;

(c) the Company has reasonable grounds to believe that the Network Services are being used fraudulently;

(d) any licence under which the Customer has the right to run its telecommunications system and connect to the Network Services is revoked, amended or otherwise ceases to be valid; or

(e) the Company is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Customer.

5.6.2 The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 5.6.1 and/or the recommencement of the provision of the Network Service as appropriate, save in the case of a suspension, pursuant to condition 5.6.1(b).

5.6.3 Without prejudice to any other right of termination under these Conditions, the Company may terminate the Contract for Network Services forthwith in the event that its right or the right of the relevant Carrier to provide the Network Services is withdrawn by the Director General pursuant to the General Conditions or otherwise.

5.6.4 On termination of the Contract for any reason the Customer shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Numbers

#### 5.7 VOICE OVER INTERNET PROTOCOL (VOIP) NETWORK SERVICES

5.7.1 Any order for VOIP services which is accepted by the Company, pursuant to condition 2.1 is conditional on the Customer acknowledging that the VOIP service:

(a) may not offer all the features or resilience the Customer may expect from a conventional phone line; and

(b) is not a Publicly Available Telephony Service (PATS) and as a result, may sometimes be limited,

unavailable or disrupted due to events beyond the Company's control e.g. power disruptions, failures or the quality of the broadband connection.

#### 5.8 DISPUTE RESOLUTION

5.8.1 The Company will attempt to resolve any dispute that the Customer may have with the Company. If the dispute cannot be resolved within 12 weeks of the Customer raising the dispute with the Company, then the Customer may refer the matter to:

(a) the Telecommunications Ombudsman, via the website ([www.otelo.org.uk](http://www.otelo.org.uk)) or by telephone on 0845 050 1614; or

(b) OFCOM, the communications regulator via the website [www.ofcom.org.uk](http://www.ofcom.org.uk) or by telephone on 020 7981 3040 or 0300 123 3333.

5.8.2 Any dispute must be submitted in writing for the attention of; Customer Service Manager at Glencroft House, Vale Road, Heaton Mersey, SK4 3QR.

5.8.3 Nothing in this clause 5.9 shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

## 6. MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed on the relevant Order Form, this condition 6 shall apply to the Contract.

#### 6.1 DURATION OF MAINTENANCE SERVICES

6.1.1 Subject to the payment of the Annual Support Charge each year by the Customer, the Company shall supply to the Customer the Maintenance Services

6.1.2 Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract will renew automatically for further periods of 12 months.

6.1.3 The Customer may terminate the Contract by giving no less than three months notice in writing to the Company, such notice to become effective no earlier than the day after the last day of the Minimum Term.

#### 6.2 PROVISION OF MAINTENANCE SERVICES

6.2.1 The Maintenance Services shall apply only in respect of Equipment as set out in the Order Form and any other equipment which it is agreed between the parties in writing shall be included under the Contract for Maintenance Services.

6.2.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will, within two Business Days, on receipt of notification from the Customer of a request for the provisions of Maintenance Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship

6.2.3 Where the Company replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof.

6.2.4 The Company does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 6.3.1 and 6.3.2) will ensure that the Equipment operates without interruption or error.

6.2.5 Subject to spare part availability, the Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required to keep the Equipment in satisfactory operation.

6.2.6 Subject to condition 6.3.1, Maintenance Services shall not include the following:

"Excepted Services"):

(a) the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use including failure to observe any instructions supplied by the Company regarding the operation of the Equipment;

(b) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of condition 6.5;

- (c) the alteration, modification or maintenance of the Equipment by any other party other than the Company without the Company's prior written consent;
- (d) the transportation or relocation of the Equipment save where the same has been performed at the request of the Company;
- (e) the maintenance or repair of any extension wiring after the initial twelve month warranty period under condition 4.4.1 has passed, any Equipment not at the Site or of anything other than the Equipment;
- f) ancillary items including but not limited to answer phones, analogue phones or devices, call loggers, payphones, computers, servers, UPS, batteries, public address systems, printers, cabinets, external music on hold sources, any cabling and consumables unless otherwise agreed in writing.

### 6.3 ADDITIONAL CHARGES

6.3.1 The Company may upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 6.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described and outlined upon the reverse of a maintenance contract.

### 6.4 DISCONTINUED SERVICES

6.4.1 Without prejudice to condition 13 or any other right of suspension or termination of Services under these Conditions, the Company shall have the right to discontinue the Maintenance Services in respect of specified Equipment (without further liability to the Customer) in the event that the Company's supplier and/or the manufacturer has ceased to supply such Equipment PROVIDED THAT the Company shall notify the Customer as soon as reasonably possible after it is aware of any cessation in supply of the Equipment and shall arrange with the Customer to either terminate the Contract or replace or upgrade the affected Equipment at the Customer's expense.

6.4.2 Without prejudice to condition 13 or any other right to terminate any Services under these Conditions, the Company shall have the right to terminate forthwith the supply of the Maintenance Services (without further liability to the Customer) in the event that any necessary approvals required by the Company to maintain any of the Equipment are disallowed or revoked by any government or regulatory agencies.

6.5 The Customer undertakes that:

6.5.1 it shall ensure that the Equipment is used in a normal and proper manner;

6.5.2 it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("User Instructions");

6.5.3 it will carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;

6.5.4 it will not permit alteration to call routing apparatus or extension wiring except by the Company, or by the Company's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either

(a) the Company so agrees in writing, or

(b) the Company fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;

6.5.5 it will not employ a third party to make any alterations to the programming or physical structure of the Equipment;

6.5.7 it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;

6.5.8 if the Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

### 6.6 CHANGE OF LOCATION

6.6.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of the Company, (such consent not to be unreasonably withheld).

## 7. FINANCE AND CREDIT

7.1 The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to, the Company carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, directors, officers and assigns and the Customer undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.

7.2 It is agreed that where the Company approaches a finance provider to arrange finance for the purchase of Equipment then the Company acts as an agent for the Customer and not for the finance provider.

7.3 The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, who will add to the person's records details of the searches and these will be seen by other organisations that make searches.

7.4 In the event that the Company is unable to obtain finance on the terms originally proposed then the Company shall return the deposit received from the Customer without further liability to the Customer.

7.5 Where third party indemnities are required by the finance provider failure to provide such indemnities shall constitute a breach of these Conditions and shall entitle the Company to retain any deposit paid by the Customer.

7.6 After Delivery and Installation (where applicable) is completed any failure by the Customer to complete the finance agreement documentation shall render the Customer liable to pay to the Company the whole of the Price as defined in condition 8.1.2 within seven days of presentation of an invoice.

## 8. PRICE AND CHARGES

### 8.1 EQUIPMENT

8.1.1 The Price is as stated on the Order Form and is exclusive of VAT or any other tax or duty payable. The amount of such taxes or duties shall be added to the Price and shall be payable by the Customer in the same manner as the Price.

8.1.2 Unless otherwise specified the Price is based on the assumption that the Equipment and (where applicable) Installation Services will be completed in one continuous visit to the site agreed with the Customer and accordingly the Company may at its discretion at any time increase the Price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of Delivery taking more than one visit.

### 8.2 NETWORK SERVICES

8.2.1 The Charges will be as detailed in the Tariff or as stated on the Order Form.

8.2.2 The Company shall have the right to alter the Charges from time to time by giving the Customer not less than 14 days' notice.

8.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer.

8.2.4 Line rental is payable from the Connection Date.

8.2.5 If the Customer has agreed to an Annual Minimum Call Spend and at the end of any given year (beginning on the Connection Date or any anniversary thereof), the Customer has not incurred the Annual Minimum Call Spend, or if the Customer terminates the Contract in any way other than pursuant to clause 13, the Customer will be liable to pay the difference between the Charges incurred during that year in relation to call spend and the Annual Minimum Call Spend.

8.2.6 The Company reserves the right to apply a monthly minimum threshold of at least £7.50 per Customer account to keep the account operating at a viable level. This charge shall only apply to the telephone services element of Network Services.

### 8.3 MAINTENANCE SERVICES

8.3.1 The Customer shall pay to the Company the Annual Support Charge in accordance with condition 9.3.

8.3.2 The Company shall have the right to alter the Annual Support Charge from time to time by giving

the Customer not less than 14 days notice.

#### 8.4 VALUE ADDED TAX

All sums referred to under these Conditions, the Order Form and any Service Specific Conditions are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of invoice.

#### 8.5 TEMPORARY SERVICES

If the Customer orders a temporary Service, the Company may charge the Customer for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

## 9. PAYMENT

### 9.1 EQUIPMENT

9.1.1 A deposit equal to at least one half of the Price is required at the time of the placing of the order unless agreed otherwise in writing. The balance of the Price as defined in condition 8.1.1 is payable immediately upon completion of Delivery.

### 9.2 NETWORK SERVICES

9.2.1 The Customer shall be invoiced monthly in arrears by the Company and shall pay the Charges by Direct Debit within ten days of the date of the invoice.

9.2.2 Line rental is payable quarterly in advance, unless expressly agreed in writing by the Company.

### 9.3 MAINTENANCE SERVICES

9.3.1 Unless otherwise agreed, the Customer will pay the Annual Support Charge to the Company by Direct Debit in advance of the relevant period as set out in the Order Form.

9.3.2 Where the Company has agreed to raise an Annual Support Charge annually the Customer will pay the charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date.

9.4 The Company will send invoices to the Customer via email (e-billing) to the e-mail address notified by the Customer to the Company. If the Customer does not give a valid email address, the invoice will be sent to the registered address of the Customer at an additional cost to the Customer as set out in the Tariff.

9.5 If the Company is unable, for whatever reason, to recover the sums due under the Customer's account within 7 days following the due date for payment, the Company reserves the right to suspend all or any of the Services.

9.6 If the Customer's account remains unpaid the Company may require a security deposit of three times the average monthly invoice or payment in full for the next 12 months before the Company will reinstate the Service.

9.7 If the Customer's account remains unpaid for a period of 32 days after the original due date for payment, the Services may then be terminated by the Company.

9.8 If the Customer's account remains outstanding for any reason after the original due date for payment, then:

9.8.1 the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount; and

9.8.2 the Company reserves the right to refer the outstanding account to a debt collection agency. If the Company is required to instruct a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay the Company's costs payable to the agency, who will add the sum to the Customer's outstanding debt.

9.9 The Customer is required to ensure that the name of the account holder is the same as the name on the payment details provided.

9.10 If the Customer cancels an active Direct Debit instruction once a Contract has commenced an additional administration fee will be added to the monthly invoice until the Direct Debit is reinstated.

9.11 The Company may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between the Company and the Customer if:

9.12 the Company has reason to believe the Customer is in breach of the Contract;

9.12.1 the Customer is conducting its business or using a Service illegally (including without limitation in breach of the Code or any OFCOM requirements) or for an illegal purpose; and/or

9.12.2 the Company has received notice from another network operator that payment will be withheld in respect of calls and the Company has satisfied itself on reasonable grounds that such event has occurred.

9.13 If any sum owed by the Customer to the Company under the Contract or any Contract with the Company is not paid by the due date, the Company may deduct this sum from any payment or credit due to the Customer under the Contract or any other Contract with the Company.

9.14 Payment of all sums due to the Company shall be made without any set-off whatsoever.

9.15 If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to the Company within 14 days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

(a) less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

(b) more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

## 10 SITES

10.1 To enable the Company to fulfill its obligations under any Contract:

10.1.1 the Customer shall permit or procure permission for the Company and any other person(s) authorised by the Company to have reasonable access to the Customer's Sites, Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as the Company requests.

10.1.2 The Company will normally carry out work, by appointment and during Normal Working Hours but may request the Customer to provide access at other times.

10.2 At the Customer's request, the Company may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay the Company's reasonable charges for complying with such a request.

## 11 WARRANTIES AND LIMITATION OF LIABILITY

11.1 Unless otherwise stated in these Conditions (or any relevant Service Specific Conditions) the Company makes no warranty in respect of the supply of Equipment and Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a Contract for the supply of Equipment and/or Services are hereby excluded to the fullest extent possible, save for those warranties which by reason of such statute or other direction, regulation or governmental authority cannot be excluded.

11.2 Subject to condition 11.5, in no circumstances shall the Company's liability to the Customer in respect of one incident or series of connected incidents in any one year, exceed 100% of the Price paid for Equipment and Installation Services and/or the Charges paid for Services (as the case may be) for the relevant Equipment and Installation Services and/or Services to which the claim or claims relate in the 12 months prior to the date on which the claim or claims arose.

11.3 Under no circumstances shall the Company be liable in any event under the Contract in contract, tort (including negligence) or otherwise for any:

(a) loss of revenue;

(b) loss of business;

(c) loss of contracts;

(d) loss of anticipated savings;

(e) loss of profits; or

(f) any indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.

11.4 Neither party shall be liable to the other party for any breach of any provision of the Contract caused by any reason outside the control or responsibility of that party including without limitation in respect of Network Services supplied by the Company, the failure of any Carrier to provide network capacity (or any element thereof) to the Company on which it was reliant for the purposes of the Contract (whether in breach of contract or otherwise), any Act Of God, terrorist attacks, inclement weather, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

11.5 Nothing in these Conditions excludes or restricts either party's liability:

(a) for death or personal injury resulting from that party's negligence or its employees negligence while acting in the course of their employment;

(b) any proven fraudulent misrepresentation;

(c) any indemnity given under the Contract; and/or

(d) for anything for which the parties cannot at law limit or exclude their liability.

## **12 CUSTOMER'S INDEMNITY**

12.1 Without prejudice to any other rights of the Company, the Customer shall indemnify and hold harmless the Company against all liabilities, claims, damages, losses and expenses whatsoever arising from any breach by the Customer of any warranties, undertakings and/or representations given under and/or any failure to comply with any responsibilities and liabilities of the Customer set out in these Conditions.

## **13 TERMINATION AND CONSEQUENCES**

13.1 Subject to conditions 13.3 and 13.4 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled to change or cancel an order:

13.1.1 at all in respect of Equipment; or

13.1.2 except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Services (which for the avoidance of doubt shall be no earlier than the day after the last day of the Minimum Term); unless otherwise agreed in writing with the Company.

13.2 In the event of any termination by the Customer, the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer cancelling the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding line rental charges, any Annual Minimum Call Spend, Annual Support Charges, subscriptions or otherwise that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Network Services transferred from third parties) and expenses incurred by the Company as a result of such changes or cancellation.

13.3 Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than thirty days" written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 13.3, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.

13.4 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under these Conditions (including without limitation non-payment of charges due) or any Service Specific Conditions and in the case of breaches which are capable of remedy such party fails to remedy such breach within 14 days of written notice by the other party of what the breach is and requesting that the breach is remedied.

13.5 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).

## 14 CALL MONITORING

The Company may occasionally monitor and record calls made to or by the Company by or to the Customer, for training purposes, to improve the quality of its customer services and to assist with complaint handling.

## 15 FRAUD AND SECURITY

15.1 The Customer must ensure that user names and passwords used in connection with the Services are kept confidential and are only used by authorised users. The Customer must inform the Company immediately if the Customer knows or suspects that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer must not change or attempt to change a user name without the Company's written consent.

15.2 The Company reserves the right (at the Company's sole discretion):

15.2.1 to suspend user names and password access to the Services if at any time the Company thinks that there has been or is likely to be a breach of security; and

15.2.2 to ask the Customer to change any or all of the passwords the Customer's uses in connection with the Services.

15.3 The Customer must inform the Company immediately of any subsequent changes to the information the Customer supplies to us.

15.4 The Customer accepts and acknowledges that the Services are not secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services.

15.5 The Company has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled, except where it is contractually responsible under the Management Services.

15.6 The Company shall not be responsible for call charges or other charges resulting from fraudulent use of the Equipment or Services by the Customer or any third parties and the Customer agrees to pay all additional charges related to such fraud. Customers are therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent use have been taken.

15.7 Any assistance given by the Company in relation to fraud or its prevention will be on an endeavours basis only and no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent means that are beyond the Company's reasonable control.

## 16 GENERAL

16.1 No forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as a waiver of any of these Conditions.

16.2 These Conditions and any Contract shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with these Conditions to the exclusive jurisdiction of the English Courts.

16.3 Unless otherwise stated within any Service Specific Conditions, the Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else who shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.4 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

16.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.