

Standard Terms and Conditions

Standard Terms and Conditions for the Provision of Equipment and Services

Please read these terms and conditions carefully as they apply, to the exclusion of all other terms and conditions, to the provision of equipment and services by NTE Limited to you. Please also see our Fair and Acceptable usage policy available at www.nte.works.

1.0 INTERPRETATION

1.1 In these Conditions:

"Charges" means the charges for the provision by the Company of Equipment and Services during the Minimum Period and any continuation thereon as amended from time to time in accordance with clause 6;

"Client" means the person, firm or Company purchasing or agreeing to purchase goods or services from the Company;

"Client Care" means a fault repair service tailored to meet the Client's requirements as agreed between the parties;

"Client Equipment" means any equipment (including without limitation Purchased Equipment, cabling, wiring, personal computers, PBX, routers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Company's Equipment and used by the Client in conjunction with any Company Equipment in order to obtain or use the Services;

"Company" means NTE Limited, 7 Camberwell Way, Moorside Park, Sunderland, SR3 3XN (registered in England and Wales under number 3451873);

"Company Equipment" means such equipment owned or used by the Company as is necessary to provide the Services;

"Company Network" means the telecommunications network operated and maintained by the Company;

"Conditions" means the terms and conditions set out in this document;

"Contract" means the contract for the purchase of Purchased Equipment and provision of the Services subject to these Conditions;

"Equipment" means one or more of the Company Equipment, the Client Equipment and the Purchased Equipment as applicable;

"Fair and Acceptable usage policy" means the Company's fair and acceptable use policy, the current version of which is available at www.nte.works (or at such other URL as is notified to the Client by the Company from time to time);

"Minimum Period" means a period of thirty-six (36) months from the Service Commencement Date or such shorter period as stated on the Standard Order Form;

"Purchased Equipment" means any equipment purchased by the Client from the Company in connection with the provision of the Services;

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

"Service Care" means care levels 2, 3 or 4 or as specified by the Company's published literature;

"Service Charge Guide" means all and any information relating to Charges for the Services, available on request from the Company;

"Service Commencement Date" means the earlier of:

(a) The date the relevant Service is available for use by the Client; or

(b) The date the Client first uses the Services;

"Site" means the site (or sites) at which any Company Equipment and/or Purchased Equipment shall be located or to which the Services shall be provided;

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"Standard Order Form" means the Company's Standard Order Form completed by (or on behalf of the Client and accepted by the Company to order the Services and/or Purchased Equipment subject to the Contract;

"Survey" means any survey or other investigations carried out by or on behalf of the Company that the Company in its absolute discretion deems necessary prior to the provision of the Services; and

1.2) In these Conditions:

1.2.1) Headings shall not affect interpretation;

1.2.2) References to "the Contract", "the Services" or any payment includes any part of any of them.

1.2.3) A "person" includes any person, partnership, firm, company (as defined in Section 735 Companies Act 1985), body corporate or corporation (as defined in Section 740 Companies Act 1985) or organisation;

2.0 PROVISION OF SERVICES

2.1 The Company shall sell and the Client shall purchase the Purchased Equipment and the Services set out on the Standard Order Form subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Client purports to apply or which are implied by trade, custom or course of dealing and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of the Company (in its sole and absolute discretion).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Client's order or other document will form part of the Contract simply as a result of such document being delivered to the Company or referred to in the Contract.

2.3 Any variation to these Conditions is of no effect unless agreed in writing by a Director of the Company.

2.4 These Conditions constitute the entire agreement between the Client and Company for the supply of the Purchased Equipment and the provision of the Services.

2.5 The Company's employees or agents are not authorised to make any representation concerning the Purchased Equipment or Services unless confirmed by the Company in writing, and the Client acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently)

2.6 Any advice or recommendation given by the Company or its employees or agents to the Client as to the application or use of the Purchased Equipment and Services which is not confirmed in writing by the Company is followed or acted upon entirely at the Client's own risk.

2.7 Any error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.8 The Client acknowledges that the Services and Purchased Equipment are being purchased as part of a business to business transaction and that the Consumer Protection (Distance Selling Regulations 2000 do not apply).

3.0 QUOTATIONS, SPECIFICATIONS AND ORDERS

3.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before written acceptance of the Client's order by the Company.

3.2 Each order for Purchased Equipment and Services by the Client is an offer by the Client to purchase the Purchased Equipment and Services subject to these Conditions. To order Purchased Equipment and Services, the Client must comply with and submit the Company's Standard Order Form.

3.3 No Standard Order Form submitted by the Client by whatever means is accepted by the Company until the Company confirms its written acceptance or (if earlier) the Company supplies Equipment and/or the Services to the Client.

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3.4 The Client must ensure that the terms of any order included on the Standard Order Form (including any specification) are complete and accurate and that the Company is provided with any necessary information relating to the provision of Services and supply of the Purchased Equipment within sufficient time to enable the Company duly to perform the Contract.

3.5 Notwithstanding clause 3.2 if at its discretion the Company accepts an order for Services placed other than on its Standard Order Form, or a Client Order Form, or if the Company installs a Service without having received from the Client and/or accepted either the Company's Standard Order Form or a Client Order Form, the Services shall be provided in accordance with the terms of the Contract in accordance with these Conditions.

3.6 The Company reserves the right to make any changes in the specification of the Purchased Equipment, Company Equipment or Services which are required for such equipment or Services to conform with any applicable Law or, where the Purchased Equipment, Company Equipment or Services are to be supplied to the Client's specification, which do not materially affect their quality or performance.

3.7 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to connect any Company Equipment so that the Services are available by any requested service date. An order may be cancelled by the Company without liability if the results of any Survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the Services by the requested service date.

3.8 The Client acknowledges that provision by the Company of specific telephone numbers is not guaranteed until connection to the Company Network is complete and the provision of Services has commenced.

4.0 CLIENT EQUIPMENT

4.1 The Company shall have no liability for any loss or damage arising directly or indirectly from use of the Client Equipment whether or not the Company shall have recommended the use and/or performance of such Client Equipment.

4.2 Unless otherwise agreed in writing, the Client is responsible for ensuring that the Client Equipment is programmed, equipped, compatible and connected for use of the Services in accordance with the Company's reasonable instructions and any other instructions or safety and security procedures applicable to the use of Client Equipment.

4.3 The Company may from time to time vary the technical and/or operational procedures for use of the Services and the Client is responsible for ensuring that the Client Equipment is reprogrammed, equipped, compatible and connected for use of the Services following such variation, including the cost of such changes that are required.

4.4 The Client must ensure that all Client Equipment is in good working order and complies with applicable standards, approval and any relevant Law. The Company may require the Client to disconnect (in which case the Client must do so promptly) or may itself disconnect any Client Equipment if in the Company's reasonable opinion:

4.4.1) It does not conform to applicable standards, approvals or any relevant Law for the time being in force;

4.4.2) It may cause injury to any person or material damage to property; or

4.4.3) It may materially impair the quality of any Services provided by the Company.

4.5 The Company has no liability whatsoever where any inability to use the Services is due to incompatibility between Client Equipment and the Company Equipment, Purchased Equipment or Services, or for any breakdown or failure in Client Equipment.

4.6 It is the sole responsibility of the Client to implement and maintain Equipment security. NTE recommends the Client obtains professional security advice with regard to Equipment connected to the Services.

5.0 CANCELLATION AND DELAY

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5.1 No order may be cancelled by the Client except with the Company's written agreement and on terms that the Client shall indemnify the Company against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

5.2 If the Client extends or delays the Contract or fails to take delivery of any Purchased Equipment or Company Equipment or Services at the agreed time or (if no time is agreed) within a reasonable time then the Client shall indemnify the Company against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges and expenses incurred by the Company as a result of such extension, delay or failure.

5.3 The Company reserves the right to defer the date of delivery or performance or to cancel the Contract without liability to the Client if it is prevented from or delayed in carrying on its business by any cause beyond the Company's reasonable control which includes but shall not be limited to Act of God, explosion, flood, tempest, fire or accident, war or threat of war, terrorist actions, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery). In such circumstances, the Client may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 120 days but in any event shall remain liable to pay for Purchased Equipment or Services delivered or supplied prior to such cancellation by the Company or the Client.

6.0 CHARGES

6.1 The Charges for the Purchased Equipment and the provision of Services are the Company's quoted Charges or, where no Charges have been quoted (or a quoted Charge is no longer valid), the Charges listed in the Company's Service Charge Guide at the date of delivery of Equipment or provision of Services.

6.2 Charges for the Services are as agreed in writing (including the Standard Order Form) or as otherwise referred to in the Service Charge Guide. Notwithstanding the aforesaid, Charges are subject to confirmation by the Company. If following any Survey (or other investigation) the Company concludes that it will incur unusual additional costs in providing the Services, the Company shall be entitled, on notification to the Client, to increase the Charges by the amount of such costs. Where the Client does not accept such increased Charges, the Contract will come to an end.

6.3 The Company reserves the right at any time before delivery or performance to amend the Charges for the Purchased Equipment or Services to take into account any variation in cost to the Company.

6.4 The Charges are exclusive of any applicable VAT.

6.5 The Client acknowledges that the Charges for the Services are comprised of a number of components, including (but not limited to), standard per minute costs, minimum call charges, connection costs, call configuration costs and minimum call times, as detailed in the Service Charge Guide. The Client further acknowledges that the Charges levied for the Service components are subject to change and any increase or decrease in such component Charges payable or recovered by the Company as a result of changes implemented by the Company or third party suppliers shall be applied to the account of the Client following notification of such changes by the Company.

6.6 Other than as set out in clause 6.2 the Company may increase or implement new Charges by giving the Client 30 days' written notice. Without limitation such notice may be contained in billing information provided to the Client by the Company. Within 7 days of such notification the Client may give notice to the Company to terminate the Agreement. If the Client does not terminate in such period the Client is deemed to have accepted the increased/new charges. The Company may decrease charges at any time without notice and the Client shall have no right to terminate the Agreement.

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6.7 The Company may, at its discretion, negotiate with the Client with regards to a reduction of charges, including, without limitation, refunds, goodwill credits and loyalty credits (as applicable). Following such negotiation, the Client agrees that, by accepting reduced charges, they will enter into a new 12 month minimum term agreement with the Company, providing that there is less than 12 months remaining of the Client's existing minimum term.

6.8 Usage charges will be such charges for the use of the Services as NTE may notify to the Client from time to time by e-mail or by post. Usage charges payable shall be calculated by reference to any data recorded or logged by NTE or its service carrier and not by reference to any data recorded or logged by the Client. NTE shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to NTE in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

6.9 The Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services by the Client or any third parties (who are not employees of the Company) and the Client agrees to pay all additional charges related to such fraudulent and/or unauthorised use. Clients are therefore urged to obtain professional security advice with regard to equipment connected to the Services.

6.10 The Company will provide invoices either on paper or by email. The Company reserves the right to charge the Customer a sum of £2.50 per invoice where the customer chooses to receive paper invoices.

6.11 The Company collects payment by Direct Debit. The Company reserves the right to charge the Customer a sum of £4.50 per invoice where the customer chooses not to pay by Direct Debit or cancels a Direct Debit arrangement.

6.12 If, for whatever reason, the CPS service provided by the Company's chosen provider fails to route the Client's calls and the Client's call traffic defaults to the BT Network; the Client will be liable for the cost of all calls at the Company's BT standard charges.

7.0 PAYMENT OF CHARGES

7.1 Payment of the Charges for the Purchased Equipment (unless otherwise agreed in writing by a Director of the Company) shall become due on delivery and/or installation of the Purchased Equipment and payment of the Charges for Services (unless otherwise agreed in writing by a Director of the Company) shall be paid by direct debit or such other means of electronic funds transfer as the Company shall decide and shall be due by direct debit or other means 10 working days after the date of the Company's invoice.

7.2 The Client authorises the Company to alter the Client's direct debit instructions according to the relevant Charges from time to time as applicable. On proper termination of the Contract the Client shall be responsible for the cancellation of any direct debit instructions or other authorisations for periodic payment to the Company. Except on proper termination of the Contract the Client acknowledges that it must inform the Company immediately if it proposes to cancel any direct debit instructions. Cancellation of any direct debit instruction shall entitle the Company to suspend and/or terminate the Contract without notice.

7.3 For the purposes of this Contract, payment is received when the Company receives it in cleared funds.

7.4 Payment by the Client or on its behalf shall be made without any deduction or set off.

7.5 The Company reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002

7.6 Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.

7.7 The Company shall be entitled to payment for all instalments of Purchased Equipment delivered to the Client, whether under a blanket order or otherwise.

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7.8 If the Client fails to make any payment on the due date then Charges for all Equipment or Services provided or agreed to be provided to the Client shall be immediately due and payable without demand and the Company may:

7.8.1) Cancel the Contract or suspend deliveries or performance to the Client in accordance with clause 8; and/or

7.8.2) Appropriate any payment made by the Client to such of the Purchased Equipment or Services (or the goods or services supplied under any other contract between the Client and the Company) as the Company thinks fit.

7.9 The Company is entitled to set off sums owed by the Company to the Client against sums owed by the Client to the Company.

8.0 SERVICES PROVISION AND USE OF THE SERVICES

8.1 The Company shall provide the Services in accordance with the Contract.

8.2 The Client must promptly supply the Company with all information and materials reasonably required by the Company to supply the Services.

8.3 The Company shall use the reasonable skill and care of a competent telecommunications service provider in providing the Services. The Client acknowledges that the Services cannot be guaranteed to be fault free and the Company does not warrant error free or uninterrupted use of the Services. Notwithstanding any other provision of these Conditions, the Company shall not be liable to the Client in contract, tort (including, but not limited to, negligence), or otherwise for any acts or omissions of its suppliers which affect or otherwise impact the Services.

8.4 The Client acknowledges that the speed of any broadband element (if any) of the Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line test. The Company gives no warranty or guarantee that the Client's line(s) will produce the maximum speed advertised, (as the final speed is governed by factors that are beyond the Company's reasonable control).

8.5 The Client acknowledges that Service expedites are not guaranteed and where expedites have been requested by the Client, the Client agrees to pay all associated charges regardless of outcome.

8.6 The Client accepts and acknowledges that the Services are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services.

8.7 The Client undertakes to use the Equipment and Services in accordance with such conditions and/or instructions as may be notified in writing to the Client by the Company from time to time and in accordance with Law and the Contract. The Company may from time to time vary the technical and/or operational procedures for use of the Services.

8.8 NTE's Fair and Acceptable Usage policy forms part of this agreement and includes any restrictions imposed on NTE by the provider to it of the Services and/or Equipment and is designed to protect the level and quality of the services that NTE offers to all of its customers and permits NTE to regulate the Client's use of the Services.

8.9 The Client acknowledges that the broadband element (if any) of the 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 Client's use of the Services has or may adversely affect such network integrity or may cause network degradation the Company may change the Client's chosen access rate or manage the Client's Services as the Company sees fit in the circumstances.

8.10 The Client must not use or allow anyone to use the Services:

8.10.1) To cause annoyance, inconvenience or needless anxiety to anyone;

8.10.2) To send or receive communications that are offensive, abusive, indecent, obscene or menacing;

8.10.3) To violate or infringe the rights of any person;

8.10.4) To send or procure the sending of any unsolicited advertising or promotional material;

8.10.5) In breach of the Contract; or

8.10.6) In breach of Law.

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8.11 The Company may at its discretion suspend the Services and/or terminate the Contract if the Client is in breach of the Contract. The Client must indemnify and hold harmless the Company against liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Services in contravention of the Contract, or the Law.

8.12 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, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Services, and the Client consents to the Company co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge the name and address and account information relating to the Client to such third parties.

8.13 Where, in accordance with the Contract the Company suspends performance of or access to the Services pending compliance by the Client with the Contract, such, suspension may result in one or more of the following actions:-

- (a) Call-barring may be implemented, restricting calls to and/or from the Client's system;
- (b) Lines and Services may be designated "temporarily out of service"; and
- (c) Access rate may be changed; and
- (d) Disconnection of the Services and the Client's ability to access the Company Network.

8.14 Following a suspension of Services and a rectification by the Client in accordance with the Contract, the Company shall use its reasonable endeavours to resume access to the Services for the Client within a reasonable time. The Client acknowledges that the period of time to enable Services to be resumed is dependent upon the manner of suspension employed by the Company and, as a minimum, periods for resumption of Services would be as follows:-

- (a) Call barring 12 hours;
- (b) Lines temporarily out of service 48 hours; and
- (c) Disconnected lines 14 days

8.15 The Client acknowledges that following a suspension of Services resulting in disconnection under clause 8.14 the telephone numbers previously made available to the Client by the Company may no longer be available and a reconnection charge for each line affected may (at the discretion of the Company) be levied by the Company.

8.16 The Client shall not sell or transfer any telephone number provided to the Client by the Company for use with the Services.

8.17 The Client shall provide a suitable place and conditions for the Company Equipment (including a continuous mains electricity supply and connection points at the Client's own expense where the Company Equipment requires such services) at the Client's Site or in such other location as may be nominated by the Client so as to enable the Company to supply and continue to supply the Services (without cost to the Company) and shall prepare such Site or location at its own expense in accordance with the Company's reasonable instructions.

8.18 The Company shall provide the level of Service Care in relation to the Services as the Client has requested on the Standard Order Form. If no reference is made to the Service Care Level on the Standard Order Form, the Company will provide Service Care Level 2 or Standard Care.

8.19 If a fault in the Services is reported by the Client, in accordance with the applicable Service Care plan, and:

- 8.19.1) The Company make arrangements to visit the Site and are unable to obtain necessary access to the Site; or
- 8.19.2) The Company undertake work to correct the fault but find no fault present, or find that a fault has been caused by the act or omission of the Client; or

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8.19.3) The Company agrees to attend a Site outside the normal working hours appropriate to the applicable Service Care plan.

The Company may charge the Client in respect of such actions in accordance with the Service Charge Guide.

8.17 Transfers from third party suppliers

8.17.1 Where the transfer of lines and services from third party suppliers is included on the Standard Order Form, then the provision of any and all relevant existing services supplied to the Client by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Service Charge Guide.

8.17.2 The Client hereby acknowledges and accepts that it is the Client 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 Standard Order Form at the time of the Company formally accepting such Standard Order Form that the Company will pay for specified charges.

8.18 IP Services

8.18.1 IP services include the provision of Voice Over Internet Protocol (VoIP) and Session Initiation Protocol (SIP) Services. Any Contract for IP services which results from an order accepted by the Company, pursuant to condition 2.1 is conditional on the Client acknowledging and accepting that:

- (a) The IP service may not offer all the features or resilience the Client may expect from a conventional phone line; and
- (b) The IP Service may sometimes be limited, unavailable or disrupted due to events beyond the Company's control e.g. power disruptions, failures or the quality of any connection;
- (c) Wherever possible, alternative arrangements should be made by the Client and a primary telephone line maintained;
- (d) The ability for the Client to make Emergency Calls cannot be guaranteed;
- (e) Emergency Calls made using the IP Service may fail if there is a power failure or connection failure;
- (f) It will not be possible to make Emergency Calls if the Company has suspended or interrupted the IP Service for any reason;
- (g) The Client understands and acknowledges that the location information provided to the emergency services is limited to the location details of the Client's primary landline, but depending on the circumstances this may not be where the call was originated. It is the Client's responsibility to notify the Company of any changes to this information.
- (h) In the event that the users of the VOIP Service have the option to work from different permanent locations, we recommend that the Client registers and updates the location information of these users with the Company whenever accessing the VOIP Services from a new location or different locations, so that up-to-date information can be used for emergency location information.
- (i) The Client shall be required to provide/confirm his location when making an IP originated Emergency Call to enable the correct emergency organisation to respond; and
- (j) A IP originated Emergency Call will not receive the same network priority at all points over non-emergency calls as an Emergency Call made on a mobile network or on a circuit-switched fixed line.
- (k) By ordering IP services, the Client confirms that it shall be the Client's sole responsibility to make available to users of the IP services, alternative means of accessing emergency calls services, and to inform or otherwise make aware users of the IP services purchased by the Client of the possible limitations of this service set out above.

9.0 RISK AND PROPERTY

9.1 All equipment shall remain the sole and absolute property of the Company and title to and legal ownership of the goods shall not pass to the Client until.

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9.1.1) Their full price has been received by the Company; and

9.1.2) All other sums which are due from the Client on any account with the Company have been received by the Company.

9.2 If payments received from the Client are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.

9.3 The Equipment shall be at the Clients risk at the time of delivery, or if the Client has arranged to collect the goods, at the time of collection. The Client is required to inspect the Equipment on receipt and notify the Company of any defects or complaints within 7 days of receipt.

9.4 Until ownership of the Purchased Equipment passes to the Client, the Client must:-

9.4.1) store it at its own cost at the Site separately from any other goods and in a manner which makes them readily identifiable as the equipment of the Company;

9.4.2) not destroy, deface or obscure any identifying mark or packaging of the Purchased Equipment;

9.4.3) maintain the Purchased Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks

9.5 The Company may, so as to discharge any overdue payment from the Client recover or resell the Purchased Equipment.

9.6 In order to verify the Client's compliance with its obligations under clause 9.4 and to exercise its rights under clause 9.5 the Company shall be entitled by its employees or agents without notice to enter the Client's Site or such other premises where the Purchased Equipment is located.

10.0 LIMITATION OF LIABILITY

10.1 The following sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Client in respect of any breach of these Conditions, any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.

10.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-

10.2.1) Any implied condition that the Company has or will have the right to provide the Purchased Equipment when the property is to pass; or

10.2.2) If the Purchased Equipment is sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, any implied term relating to the conformity of the Purchased Equipment with their description or sample or as to their quality or fitness for a particular purpose.

10.3 Where the Purchased Equipment or Services are provided under a consumer transaction as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Client are not affected by these Conditions.

10.4 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

10.5 Subject to clauses 10.2 and 10.4:-

10.5.1) The Company shall not be liable for any financial, consequential or indirect loss suffered by the Customer or any third party whether such a loss arises from breach of duty in contract or tort or in any other way including without limitation to the generality of this exclusion, loss of profits, economic loss, loss of good will, loss of contracts, loss of data, damage to the property of the Customer or anyone else (other than damage caused by the negligence of Company employees, agents or subcontractors) and personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence) ; and

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10.5.2) Subject to clause 10.5.1, the Company's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the Charges incurred by the Client in any 12 month period.

11.0 INDEMNITY

11.1 The Client agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company towards a third party arising out of or in connection with the Equipment or Services provided by the Company or their operation or use and whether arising by reason of the negligence of the Company or otherwise.

11.2 The Client accepts full and complete liability for any costs, losses or damages incurred as a result of fraud and agrees to indemnify the Company against any costs, losses or damage suffered by the Company arising from any fraudulent activity made, including any costs and expenses reasonably incurred by Company in investigating any such fraudulent activity. For the avoidance of doubt, fraudulent activity includes but is not limited to:

- (a) Calls made from the Client's Equipment without their knowledge;
- (b) and/or calls made utilising the Client's authentication details;
- (c) and/or calls made from an authenticated IP address.

It is the sole responsibility of the Client to implement and maintain Equipment security, independently of the Company, and the Company recommends that the Client obtain professional security advice with regard to Equipment connected to the Services.

12.0 DURATION AND TERMINATION

12.1 The minimum term of the Contract is 36 months unless the Standard Order Form states otherwise.

12.2 In relation to the Services, the Contract shall come into effect on the earliest of the dates the Client signs the Standard Order Form or the Service Commencement Date.

12.3 The Contract shall continue in force unless either party terminates the Contract by giving the other party 30 days' written notice, or such shorter period as the Company may agree. Such notice period shall not be valid unless it expires on or after the end of the Minimum Period.

12.4 Notwithstanding clause 12.3, the Company may terminate the Contract immediately on written notice if:

12.4.1) Any Survey is not, in the Company's discretion, satisfactorily completed;

12.4.2) The Client is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a liquidator, trustee in bankruptcy, receiver or administrator (or equivalent) is appointed over any of the Client's assets or the Client enters into any formal or informal composition or arrangement (or equivalent) with the creditors of the Client or the Company reasonably believes that such events are reasonably likely to occur. For the purposes of this clause 12.4.2 the Client shall include the Client's direct and/or indirect parent company and "Client" shall be interpreted accordingly;

12.4.3) The Client makes a material misstatement in the details the Client has supplied to the Company to enable the Company to provide the Services;

12.4.4) The Client materially breaches (including without limitation failure to pay any Charges promptly) the Contract or any other agreement the Client may have with the Company or a member of the Company's group;

12.4.5) The Company suspects on reasonable grounds that the Client may have committed or may be committing:

(a) A breach of Law; and/or

(b) Any fraud against the Company or any third party.

12.4.6) The Client fails to meet a reasonable standard of creditworthiness; or

12.4.7) Any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.

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12.5 If the Company requests the Client to do so but the Client fails to return to the Company (or as otherwise notified to the Client by the Company) the Standard Order Form duly signed by the Client within 14 days of the Service Commencement Date (or any other date notified to the Client by the Company) the Company shall be entitled (but not obliged) without notice to terminate the Contract or, without prejudice to its right so to terminate, to downgrade or suspend the Services as it thinks fit.

12.6 On termination of the Contract by reason of the Client's breach of the Contract or other default, the Client shall be liable to pay to the Company 100% of the Charges that would otherwise have been payable by the Client during the Minimum Period. Such sum to be calculated by taking the average monthly Charges incurred during the period from the Service Commencement Date to the date of termination multiplied by the number of months remaining in the Minimum Period. Such sums shall be paid by way of liquidated and ascertained damages by the Client to the Company.

12.7 On termination or expiry of the Contract the Client must allow the Company promptly to remove the Company Equipment. If the Client delays prompt removal of the Company Equipment following termination or expiry of the Contract, the Company shall, until such removal is effected, be entitled to continue to charge the Client and the Client shall pay such Charges together with any additional costs and expenses caused to the Company by such delay and the Client shall remain liable for all Charges incurred by the Client through the use of the Company Network pending transfer of the Services to an alternative provider.

12.8 The right to terminate the Contract shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities-accrued prior to termination, including, without limitation termination under clause 5.3.

13.0 HEALTH AND SAFETY

The Client agrees to:

13.1 Pay due regard to all information supplied by the Company relating to the use of the Equipment necessary to ensure the Equipment will be safe and without risk to health at all times;

13.2 Indemnify the Company in respect of any and all claims arising from the Equipment being unsafe as a result of the Client's activities;

14. CALL MONITORING

The Client agrees that the Company may monitor and record calls made to or by the Company by or to the Client (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Client undertakes to make its employees and personnel aware of the rights reserved by the Company under this condition.

15.0 GENERAL

15.1 All descriptions, drawings and particulars relating to the goods and or services in any catalogues, leaflets, brochures or other documents are for illustrative purposes only and do not form part of the agreement between the Company and the Client. All representation as to the performance of the goods is based on information supplied by the manufacturer of the goods and relates to their performance in normal conditions and when used correctly.

15.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy to the Company, whether or not under the Contract.

15.3 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall (subject to termination at the discretion of the Company), continue in full force and effect.

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15.4 Failure or delay by the Company in enforcing or partially enforcing any provision or breach of the Contract is not a waiver of any of its rights or provisions under the Contract.

15.5 Any Director or representative of the Client who signs on behalf of the Client will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Client to the obligations set out in these Conditions and any relevant Service Specific Conditions in all respects.

15.6 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

15.7 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission to the Company's registered address.

15.8 A notice is deemed to have been received:-

15.8.1) If delivered personally, at the time at delivery;

15.8.2) If sent by prepaid first class post; on the third working day after posting (exclusive of the day of posting);

15.8.3) If sent by facsimile transmission, on a working day prior to 5.00pm at the time of completed transmission and otherwise on the next working day.

15.9 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16.0 ASSIGNMENT

16.1 The Company may assign, subcontract or otherwise transfer the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.

16.2 The Client may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

17.0 ENGLISH LAW

17.1 These Conditions shall be governed by and construed in accordance with English law.

End - Updated 3/2/16 v3