

Portsmouth Communications Ltd

Our Terms of Business

Please read this carefully:

All sales of our Equipment and Services (see 1.2) are subject to the following conditions and these form the contract between you (the Customer) and us (the Company).

1 PRELIMINARY

1.1 In these conditions:

“The Company” means Portsmouth Communications Ltd (PCL).

“The Contract” means the Contract between the Company and the Customer for the sale or supply of Equipment or provision of Services (as detailed below).

“The Customer” means the person within a company, firm or company with whom the Contract is made by the Company.

“The Consumer” means any individual or household that order equipment or services and with whom the contract is made by the Company and that any reference made to the “Customer” in the following terms and conditions also applies to the Consumer other than those terms outlined in 3.6).

“The Equipment” means any equipment, machinery, parts, spares, software and any other goods sold or supplied by the Company.

“The Services” means the survey, installation, repair, and/or training services provided by the Company.

“The Warranty Period” means (see also clause 9):

- (i) All new equipment supplied by Portsmouth Communications Limited is covered by a one year return to base warranty unless otherwise stated from the date of delivery.
- (ii) Refurbished equipment is covered by a three month return to base warranty from the date of delivery.
- (iii) Labour charges are not included in this warranty.
- (iv) The purchaser is responsible for all carriage costs to and from the base address, as directed by PCL.

1.2 These Conditions apply to all Contracts of the Company to sell or supply Equipment and Services (other than Maintenance Agreements which are subject to supplementary terms and conditions*) and shall prevail over any terms put forward by the Customer unless the Company expressly agrees to them in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer and no concession made or latitude allowed by the Company to the Customer shall affect the strict rights of the Company under the Contract.

* These are included within the Maintenance Agreement document, for a copy please contact us by telephoning 01329 235050, by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040.

1.3 These Conditions may only be varied with the express written agreement of the Company.

2 PRICES

2.1 Unless otherwise specified prices payable for Equipment and Services are exclusive of VAT and carriage. They are subject to the Company’s right to require payment of delivery charges, insurance costs, customs duties, special handling charges and/or packaging charges as appropriate.

2.2 The Company shall have the right at any time to revise prices to take into account increases in costs including (without limitation) costs of agreed changes in any taxes, duties, levies or exchange rates or costs arising as a result of site conditions, delays, interruptions, lack of information and any other factor beyond the Company’s control.

3 ORDERS AND DELIVERY

3.1 No order shall be accepted by the Company unless first confirmed by the customer in writing to our address (including by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040) in our standard format to us with an order number. The Company reserves the right to accept or reject for any reason whatsoever.

3.2 The Customer shall state on placing an order if he requires the Company to arrange carriage and if so the delivery address. If the Customer so requests the Company shall be entitled to make any contract of carriage and/or insurance on behalf of the Customer as the Company considers necessary and will be under no obligation to notify the Customer thereof. The Customer will be responsible for complying with all conditions and requirements of the carriers.

3.3 All times or dates given for delivery of the Equipment and Services are only estimates given in good faith and are not conditions, warranties or in nominate terms (or terms otherwise howsoever), of this or any other (whether collateral or otherwise) contract.

3.4 The Company shall estimate when the Equipment is ready for delivery. If the Customer refuses or fails to arrange collection or take delivery (as the case may be) of Equipment ordered within seven days of service of that notice then (a) the Customer will bear the risk of any loss or damage to the Equipment after expiry of that time (b) the Company shall be entitled to immediate payment in full for the Equipment which is the subject of the order and (c) the Customer shall in addition to the invoice price pay all costs of storage and any additional costs incurred as a result of such refusal or failure. The Company shall not be liable to the Customer for any loss or damage to the Equipment caused by their storage.

3.5 The Company may make and the Customer shall accept partial deliveries of Equipment ordered. Each shall be considered to be the subject of a separate Contract and failure by the Company to make any one or more deliveries in accordance with the Contract or any claim by the Customer in respect of any one or more deliveries shall not entitle the Customer to treat the Contract as a whole repudiated.

3.6 If you are a consumer, you should be aware of your rights under the Distance Contracts Regulations (or amending provisions). These state, amongst other things, that you have the right to cancel the contract for any reason within 7 days of delivery of the goods. If you wish to cancel, you are required to notify us in writing to our address (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040). You will then be refunded within thirty days and may return the goods to us, although this will be at your cost and if we have to collect them we may deduct the collection costs from the refund paid to you. During the period that you retain the goods until they are returned to us, you must take reasonable care of them to prevent damage. However, as outlined in 4.3 any shortages, deficiencies, damage or faults with the Equipment and Services must be notified within 2 working days of delivery/completion etc.

4 ACCEPTANCE

4.1 The Customer will accept the Equipment and Services even if it is delivered late and late delivery will not entitle the Customer to terminate the Contract.

4.2 The Customer shall inspect the Equipment and Services provided as soon after delivery/completion as is reasonably practicable and in any event within 2 working days after delivery/completion, which period the customer agrees is a reasonable period given the nature of the Equipment and Services supplied by the Company.

4.3 The Customer will notify the Company in writing to our address (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040) of any shortage of supply, deficiency, or damage to or fault with the Equipment and Services within 2 working days of delivery/completion. If the Customer fails to comply with this clause the Company shall not be liable to the customer in respect of any shortage discrepancy, damage or fault, or in respect of any consequential losses or expenses arising there from.

4.4 The Customer hereby agrees that the retention of the Equipment and Services without written complaint to the Company within 2 working days of delivery constitutes for all purposes an intimation by the Customer that the Equipment and Services have been unconditionally accepted and that given the nature of the Equipment and Services supplied by the Company, 2 working days constitutes a reasonable period within which the Equipment and Services should be rejected. (If you are a Consumer please refer to 3.6)

4.5 All orders are subject to the availability of the Equipment and Services. If for any reason any particular product, item or service is not available we reserve the right to offer a suitable alternative. If we cannot we reserve the right to cancel the contract and offer a refund.

4.6 Any additional labour costs incurred by the Company to complete work due to circumstances not caused or controlled by the Company will be chargeable at our time related charge rates. This includes any delay in the provision of Public Network services (exchange lines, broadband, private circuits etc.) even when the Company have arranged these services on your behalf.

4.7 Each of the preceding sub-clauses of this clause is entirely without prejudice to the provisions of clause 9 hereof.

5 RISK

5.1 Where the equipment is collected by the customer, or their nominated carrier, from the Company the risk in the Equipment shall pass to the Customer who shall be solely responsible for the custody and maintenance thereof. Otherwise, the risk in the Equipment and Services supplied by us shall pass to you after delivery or completion of them has taken place.

6 PAYMENT

6.1 If credit terms have been agreed in writing by the Company payment shall be made in full without any deduction or set-off within 30 days of the date of the invoice unless otherwise agreed in writing by the Company. In any event, the Company reserves the right to withdraw credit facilities at any time. If the trading relationship between the Customer and the Company is terminated for whatever reason then all sums due by the Customer become payable immediately.

6.2 If credit terms have not been agreed by the Company then payment shall be made in full without any deduction or set-off at the time of placing the order for Equipment and Services.

6.3 If a deposit is requested as part of the order confirmation process, the Company reserves the right to delay the order until such time as this payment has been received. Any losses incurred due to late payment and/or the need to rearrange of other service or equipment providers shall be solely at the expense of the Customer.

6.3 If:

- (i) The Customer is unable to pay its debts as they fall due or is otherwise insolvent;
- (ii) A receiver or an administrative receiver is appointed over any part of the Customers business or assets.
- (iii) The Customer (if it is an individual) makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or a bankruptcy petition is presented against it;
- (iv) Or (if the Customer is a limited Company) any resolution or petition to wind it up is passed or presented, or any steps are taken to appoint an administrator, or an administrator is appointed over it.

then all invoices for Equipment and Services which have been delivered to the Customer (or to its order) shall become due and payable forthwith and such credit arrangements as may have been made for the same shall automatically come to an end. In the event that delivery has yet to be made, then, in addition to and without prejudice to the Companies rights at common law, equity and statute, it shall be entitled at its option to cancel the contract or to cancel or suspend delivery.

6.4 Notwithstanding any of the terms and conditions hereof the time of payment shall be of the essence of the Contract.

6.5 Any invoices outstanding past their due date will be referred to Daniel Silverman Ltd., and will be subject to a 15% surcharge plus VAT to cover collection of costs incurred. This surcharge, together with all other charges and legal fees incurred (see 6.9), will be the responsibility of the Customer and will be legally enforceable.

6.6 If any cheque presented in payment of an invoice by the Customer shall be returned unpaid by the Customers bank or if any agreed standing order or direct debit arrangement shall fail to operate then the Customer shall in addition to all other sums payable under the Contract pay to the Company the sum of £45 for each such event or such greater sum as shall represent the cost incurred by the Company by reason of such dishonour or failure as aforesaid.

6.7 If at any time whatsoever it is the Customers intention to assign its debts to an associated Company of the Customer or to a Third Party, the Customer shall notify the Company in writing to our address (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040) without delay.

6.8 If credit terms have been agreed by the Company, the Customer and its directors undertake to notify the Company in writing to our address (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040), as soon as practicable after such agreement, of the existence and identity of any associated companies under common ownership with the Customer. This obligation is a continuing obligation such that, if at any time after credit has been granted, any other Company comes into common ownership with the Customer, the same must be notified, as soon as practicable to the Company. It is agreed that the requirements under this sub-clause are of the essence of the agreement to provide credit and of any other contract made under or pursuant to that agreement between the Company and the Customer.

6.9 The Company reserves the right to cancel any contract if the Customer fails to pay any amount due to us on the due date. We also reserve the right to charge interest on a daily basis on overdue amounts as allowed by statute (for example the Late Payment of Commercial Debts (Interest) Act 1998) and any applicable administrative charges as allowed by statute. Any costs and/or expenses incurred by the Company in recovering funds from, or otherwise enforcing any of its rights against, the Customer, whether within or outside the United Kingdom, shall be fully reimbursed to the Company by the Customer, and the Customer agrees fully to indemnify the Company in respect of any such costs or expenses.

6.10 If credit terms have been agreed by the Company, the Customer undertakes to notify the Company in (including email and facsimile) of any material or potentially material change in its finances and/or structure and/or position generally. Such notifiable events include, but are not limited to:

- (i) Any change in the information supplied by the Customer to the Company for the purposes of and/or in relation to obtaining credit; and
- (ii) Any change in the ownership of the shares in the Customer and any change in the number of such shares;
- (iii) Any change in the ownership of the shares in any Company which has been, at any time after the granting of credit, under common ownership with the Customer;
- (iv) Any material change in the nature and/or value of the Customers assets, whether as a result of disposal, acquisition, the grant or crystallisation of any security, or otherwise howsoever. It is agreed that the requirements under this sub-clause are of the essence of the agreement to provide credit and of any other contract made under or pursuant to that agreement between the Company and the Customer.

6.11 For the avoidance of doubt, the Company may maintain an action for the price once the due date for payment has arisen, notwithstanding the fact that title has yet to pass to the Customer.

7 RETENTION OF TITLE

7.1 The Equipment (including those as part of any Services provided) shall remain the property of the Company until payment in full has been made for all sums payable to the Company (including those sums which have not yet fallen due for payment) under all Contracts between the Company and the Customer.

7.2 The Customer shall hold all Equipment (including those as part of any Services provided) property (in which remains in the Company as bailee for the Company. Further, it shall mark it, and store it, in such a way that it can be identified as the Company's property and shall keep it separate from the Customers own property and the property of any other person.

7.3 If, notwithstanding 7.2, the Equipment (including those as part of any Services provided) property in which remains in the Company is incorporated into or affixed to products belonging to the Customer or anyone else, property in that Equipment shall remain in the Company until full payment is made in accordance with 7.1 above.

7.4 At any time the Company shall be entitled to recover the Equipment (including those as part of any Services provided) property in which remains in the Company and for that purpose the Customer hereby grants to the Company, its agents and employees an irrevocable license to enter any premises where such Equipment is 'stored' in order to reposes the same, and (in the event that it has been incorporated or affixed to other products) to dismantle it or detach it from those products and repossess it. Further:

- (i) The Customer will give the Company' representatives all reasonable assistance to enable it to identify (and dismantle) such Equipment when they attend such premises, and
- (ii) In the event that such Equipment is no longer at the Customers' premises (either because it has been delivered to a third party under an agreement for sale or otherwise) the Customer will inform the Company where it is and provide the Company with all reasonable assistance to enable it to find and repossess the same.

7.5 The Customer may sell on Equipment (including those as part of any Services provided) property in which remains in the Company, and may appropriate it to a contract for sale and deliver it to a third party, but only when each of the following circumstances is satisfied.

- (i) The agreement for sale, and the appropriation of the Equipment to the agreement for sale and the delivery to the third party, are made and effected bona fide and in the ordinary course of business;
- (ii) The Customer, under the agreement for sale, retains title in the Equipment until it (the Customer) has been paid in full by the third party to whom it is agreeing to sell on the same;
- (iii) The Customer has complied with all its obligations (including its payment obligations) under all its contracts with the Company.

If at the time of the agreement for sale, or appropriation, or delivery, one or more of such circumstances are not satisfied, then the Customer has no right to sell such Equipment, or to appropriate it to a contract for sale, or (if it has been appropriated) to deliver it to the third party.

7.6 The Customers license in 7.5 to sell on Equipment (including those as part of any Services provided) property in which remains in the Company, to appropriate the same to a contract for sale, or to deliver the same to a third party, is automatically revoked and comes to an end in any of the following events:

- (i) It is unable to pay its debts as they fall due or is otherwise insolvent;
- (ii) A receiver or an administrative receiver is appointed over any part of the Customers business or assets.
- (iii) The Customer (if it is an individual) makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or a bankruptcy petition is presented against it; or
- (iv) (If the Customer is a limited Company) any resolution or petition to wind it up is passed or presented, or any steps are taken to appoint an administrator, or an administrator is appointed over it.

7.7 For the avoidance of doubt, the Company expressly reserves all its rights at common law and in equity in the event that the Customer makes an unauthorised sale, appropriation or delivery of Equipment and Services property in which remains in the Company. In particular, the Customer expressly acknowledges that the proceeds of any such unauthorised sale appropriation or delivery belong to and are payable only to the Company, who will not be obliged to refund any part thereof to the Customer.

STANDARD CONDITIONS OF CONTRACT

With effect from 20 July 2010, all supplies by or any associated company will be in accordance with our current standard conditions of Contract

8 SPECIFICATION AND PERFORMANCE

8.1 All drawings specification and technical documents issued by the Company at any time in relation to the Contract are issued solely for the Customer's use in connection with the Equipment and Services provided and shall not be copied reproduced or communicated to any third party without the Companies express written agreement.

8.2 The Company reserves the right to alter or depart from any specification or design of any Equipment and Services sold provided that such alteration or departure shall not to a material extent adversely affect the performance of the Equipment and Services or the quality of the workmanship or the materials used.

8.3 Unless otherwise expressly agreed in writing any performance figures, quoted or referred to in any specification or other document are estimates only based on assumed conditions in a well managed office with experienced adequate and efficient operatives and appropriate services and proper use of satisfactory materials.

9 WARRANTY

9.1 The Company will make good by repair or exchange (at its option) such of the Equipment (including those as part of any Services provided) or part thereof which is shown to its reasonable satisfaction to have proved defective in materials or workmanship during the Warranty Period on the following terms:

- (i) Any defect in or failure of the Equipment must be notified to the Company in writing (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040) as soon as practicable as and in any event no later than 2 working days after discovery.
- (ii) The Equipment must be unmodified, have been properly used under normal working conditions and have been properly stored, installed and maintained.
- (iii) Before returning the Equipment or any part thereof the Customer must obtain a return authorization number or contact reference point from the Company and details of the Companies returns procedure, which must be fully complied with.
- (iv) The Equipment or part to be returned must be delivered to the Companies premises in its original packaging together with supporting documentation showing full description of the alleged fault and quoting the relevant returns number. In the event that the Customer fails to comply with this requirement then the Company will be entitled to charge a 15% minimum handling fee upon authorised return of the Equipment.
- (v) All delivery charges for carriage to and from the Companies premises along with any labour costs incurred by the Company must be paid by the Customer.
- (vi) Where parts only are returned the Company shall not be responsible for installing any such part after repair or exchange.
- (vii) The Company may elect to carry out any repairs at the premises of the Customer and if so electing then the Customer shall provide the Company's employees or agents with free access to the place of installation and free access to any service or facilities that may be required to repair the Equipment.
- (viii) If it so elects the Company may require the Customer to return the Equipment or part direct to the manufacturer for repair or exchange in which case such repair or exchange on the part of the manufacturer shall satisfy the Company's obligations under this clause 9.
- (ix) The foregoing warranty shall only apply to any replacement Equipment or parts thereof supplied by the Company under this warranty for the balance of the warranty period applicable to the Equipment sold.
- (x) The benefit of this warranty cannot be assigned on by the Customer to a third party until the Equipment to which it relates has been paid for by the Customer. Nor can the benefit of this warranty be assigned by the Customer to a third party in relation to Equipment that is sold on under a sale, appropriation or delivery effected in breach of the license provided for by clauses 7.5 and 7.6 above.

9.2 The Company gives no undertaking that the Equipment (including those as part of any Services provided) is fit for any particular purpose (including any purpose for which such Equipment is commonly supplied) or is of any particular quality in respect of its appearance, finish, safety, durability or freedom from defects or otherwise. The Customer, having greater knowledge of his own requirements, relies entirely on his own skill and judgement in evaluating whether the Equipment is in every respect of satisfactory quality.

9.3 Subject to the foregoing all conditions, terms and representations, express or implied by statute, common law, custom or usage in relation to the Equipment (including those as part of any Services provided) are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agents.

9.4 In no event shall the Company be under any liability whatsoever and howsoever arising for any loss of use or loss of profits, interruption of business or any other indirect special or consequential loss of any type arising or alleged to have arisen out of any act or default, whether negligent or otherwise, of the Company in respect of the Company's obligations under the contract.

9.5 If the Customer deals as a consumer as defined in S.12 of the Unfair Contracts Terms Act 1977 (or amended provisions)

- (i) The above provisions shall not apply and the Customer's statutory rights under the Sale of Goods Act will be unaffected.
- (ii) You should also be aware of your rights under the Distance Contracts Regulations 2000 (or amending provisions). These state, amongst other things, that you have the right to cancel the contract for any reason within seven days of delivery of the Equipment. If you wish to cancel, you must notify us in writing to our address (or by email enquiries@portsmouthcomms.co.uk or facsimile 01329 235040).

9.6 The Company does not exclude liability for death or personal injury to the extent that it is caused by the negligence of the Company, its employees or agents nor for breach of any of the undertakings as to title implied into the Contract by S.12 of the Sale of Goods Act 1979 (or amending provisions). However, we shall have no liability for any other kind of consequential loss or damage and in any other case our liability should be limited to £1million.

10 PROGRAM LICENSES

10.1 The Customer acknowledges that all copyright and other rights in any program sold by the Company remain the property of the Licensors or Suppliers of the program and that neither the Customer nor any Third Party to whom the Customer supplies or transfers the program has any rights therein except as expressly licensed by the Licensor or supplier of the program.

10.2 The Customer may not except as expressly licensed by the Licensor or Supplier of the program:-

- (i) reproduce or translate any program or part of a program.
- (ii) sell, rent, lease or otherwise part with possession or control of a program to another party.

10.3 The Customer agrees to ensure that all programs supplied by the Company are used by any Third Party to whom the Customer transfers the program only as expressly licensed by the Licensor or Supplier of the program.

10.4 Upon any supply or transfer of the program by the Customer to any Third Party the Customer agrees to transfer to the Third Party clauses 10.1-10.3 of these conditions and thereby bind the Third Party to the same.

11 REPRESENTATIONS

11.1 The Company shall incur no liability to the Customer for misrepresentation by virtue of any statement made by or on behalf of the Company prior to the Contract whether orally or in any letter document or sales literature (including the website) and the Customer shall not be entitled to rescind the Contract on the grounds of any such misrepresentation.

12 RETURNS

12.1 The Company shall be under no obligation to accept return of any Equipment (including those as part of any Services provided) other than as provided in 3.6 and 9. If notwithstanding the Company shall in any particular case agree to accept return of Equipment which is not defective then it shall only do so on terms that:

- (i) The Customer shall pay a sum in respect of the costs so incurred by the Company equal to twenty-five per cent of the full invoice price subject to a minimum charge of £55.
- (ii) The Customer shall obtain a returns authorisation number from the Company and comply with the Company's returns procedure.
- (iii) the Equipment must be delivered to the Company's premises in its original packaging.

13 TELECOMMUNICATIONS EQUIPMENT

13.1 When the Equipment (including those as part of any Services provided) supplied by the Company is to be used in conjunction with Public Network Service Providers' lines or apparatus then the following additional conditions shall apply:

- (i) Public Network Service Providers shall have the right to require modifications to be carried out to Equipment which is already installed and in use.
- (ii) Any modifications required will be carried out at the Customers expense.
- (iii) In no event shall the Company be liable for damages, loss or injury to Public Network Service Providers equipment or personnel connection with or arising out of the Customers act or neglect.

14 INTELLECTUAL PROPERTY

14.1 All intellectual property shall remain the property of the Company and nothing in this agreement is intended to grant or otherwise imply the grant of any transfer, licence or right to use any of the Company's Intellectual Property in any manner whatsoever in the absence of express written authorisation.

14.2 Customers agree that damages may not always be a suitable remedy and agree that the Company shall be entitled to seek injunctive relief.

14.3 Where, as a result of being an independent agent of the Company, Customers are given sales material (containing intellectual property) owned by the Company, it shall be used unaltered (whether actually or contextually) and strictly for the purpose for which it is provided.

15 FORCE MAJEURE

15.1 The Company shall not be liable for any delay or failure in performance of its obligations under the Contract which is due to or results from any circumstances beyond its reasonable control including but not limited to delays or defaults of suppliers, or the defaults of any sub-contractor, war, strike, lock-out, trade dispute, flood, accident to plant or machinery, shortage of materials or labour. In any such event the Company shall be entitled to delay or cancel delivery of the Equipment. If due to any such event the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between its customers at its sole discretion.

16 CANCELLATION

16.1 No Contract or order may be cancelled without the Company's written consent. In the event that cancellation is agreed for whatever reason the Customer shall indemnify the Company against all costs, claims, loss and expense occasioned thereby including any consequential loss and loss of profits.

17 GENERAL

17.1 If at any time one or more of the above Conditions becomes in whole or in part void, invalid or unenforceable then the remainder of these Conditions shall nevertheless remain valid and enforceable.

17.2 All notices hereunder shall be in writing and shall be given by hand or sent by prepaid first class post, facsimile or email to the party concerned at its last known address. Notices sent by first class post shall be deemed (in the absence of earlier receipt) to have been delivered forty-eight hours after despatch and notices sent by facsimile or email shall be deemed to have been delivered on the first working day following the date of their despatch.

17.3 The construction, performance and validity of the Contract and of these Conditions shall in all respects be governed by the laws of England and the parties to this Contract hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

17.4 Associated Company shall mean Portsmouth Communications Ltd or any subsidiary thereof (unless otherwise expressly defined) and 'subsidiary' having the meaning as defined by section 736 of the Companies Act 1985 (or amending provisions).

17.5 These terms may not be varied unless such variation shall have been expressly agreed in writing by a duly authorised representative of the Company.

17.6 No delay or omission on the part of the Company in exercising any right, power or remedy provided by law or under this agreement shall:

- (i) Impair such right, power or remedy; or
- (ii) Operate as a waiver thereof.

17.7 The single or partial exercise of any right, power or remedy provided by law or under these terms shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

17.8 The rights, powers and remedies provided in this agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

17.9 Waiver by the Company of the performance of an obligation on one or more occasions will not amount to waiver of that obligation on any other occasion.

17.10 It is agreed that the Contract (Rights of Third Parties) Act 1999 (or any amending provisions) shall not apply to this agreement and nothing in this agreement is intended to confer any benefit upon or create rights in favour of any party other than you and us.

By placing an order the Customer accepts these Standard Conditions shall remain in force until such time as they are reviewed and any changes advised by the company or published on the website: www.portsmouthcomms.co.uk .

DEFINITIONS

In the Conditions: "We"/ "Us"/ "Our" means Portsmouth Communications Limited of Phoenix House, Desborough Park Road, High Wycombe, Buckinghamshire, HP12 3BQ; "You"/ "Your" means the individual, partnership, company or other organisation who wishes to be supplied with the Telecom Services and is identified in the Service Agreement Form ("**Form**"); "**Agreement**" means the Conditions and the Form; "**Authorised Person**" means a person authorised by Us to carry out a function under the Agreement; "**Broadband Service**" means Our broadband services including but not limited to Asymmetric Digital Subscriber Line (ADSL), Symmetric Digital Subscriber Line (SDSL), Multiple Protocol Label Switching (MPLS), VxDSL and Bonded xDSL; "**Equipment**" means any equipment We supply to You in accordance with the Agreement; "**Form**" the service agreement form; "**Intellectual Property Rights**" means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know how, database rights, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world; "**Property**" means the site at which the Telecom Services are to be provided to You; "**Technical Support Helpline**" means the telephone technical support helpline for Broadband Services (details of which are on the Website); "**Telecom Services**" means Our telecommunication and data services, offered from time to time including, but not limited to, Broadband Services, IP Telephony Services, Integrated Services Digital Network (ISDN), Public Switched Telephone Network (PSTN), Direct Connects, Leased Lines and Digital Subscriber Line (DSL); "**Website**" means www.portsmouthcomms.co.uk; "**Working Day**" means Monday to Friday 9am-5pm not including public holidays; "**Working Hours**" means between 9am and 5pm on a Working Day; "**Your Material**" means any documents, plans, drawings, specifications, details, pictures of any other record of information in any form provide by You to Us in connection with the Agreement.

1 DURATION

- 1.1 The Agreement shall take effect from the date You sign the Agreement. The Agreement shall continue unless terminated in accordance with its terms or by either party giving to the other not less than **three months'** prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period set out on the Form. If You purport to terminate the Agreement either before the expiry of the Initial Term or by giving less than three months' prior written notice, You will be regarded as having committed a material breach and We may choose to terminate the Agreement and claim damages from You.
- 1.2 We shall use reasonable endeavours to activate the Telecom Services as soon as possible but We cannot guarantee that the Telecom Services will be activated by a particular date.

2 THE TELECOM SERVICES

- 2.1 BY ENTERING INTO THE AGREEMENT, YOU APPOINT US AS THE EXCLUSIVE SUPPLIER OF THE TELECOM SERVICES AND YOU SHALL NOT APPOINT A THIRD PARTY TO PROVIDE SERVICES SIMILAR TO OR IDENTICAL TO "THE TELECOM SERVICES" WITHOUT OUR PRIOR WRITTEN CONSENT (SUCH CONSENT WILL NOT BE WITHHELD WHERE WE ARE UNABLE TO PROVIDE THE SERVICES OFFERED BY THE THIRD PARTY).
- 2.2 We are willing to enter into the Agreement principally because of the monthly call spend which We anticipate You will generate. If at any time Your monthly call spend falls beneath 75% of the anticipated monthly call spend (other than due to circumstances beyond Your reasonable control), You will be regarded as having committed an irremediable material breach.
- 2.3 We cannot guarantee that the Telecom Services will operate free from any faults, however, where We are responsible, We shall use reasonable endeavours to correct faults as soon as is reasonably practicable.

3 USE OF THE TELECOM SERVICES

- 3.1 You shall be responsible for the proper use of the Telecom Services which we supply and You agree not to contravene any applicable laws or any relevant regulations, authorisations or licences in using the Telecom Services. You shall not resell the Telecom Services.

4 ACCESS TO PREMISES AND PROVISION OF INFORMATION

- 4.1 For Us to perform Our obligations and satisfy our rights under the Agreement You will ensure that We and any Authorised Person have the necessary access to the Property and all facilities, equipment and telephone lines. You will also give Us and any Authorised Person such assistance as may reasonably be requested.

5 SUSPENSION OF SERVICES AND CHANGES

- 5.1 We may suspend immediately the provision of the Telecom Services until further notice with no obligation to give the reason for such suspension. We will endeavour to give reasonable notice where practicable. You will be liable for Our costs and expenses arising from the suspension and/or recommencement where the suspension is due to Your breach, fault or omission.
- 5.2 Occasionally We may have to (i) change the technical specification of the Telecom Services for operational reasons or to comply with safety, regulatory or statutory requirements; (ii) interrupt the Telecom Services for operational reasons, such as repairs, maintenance or improvements or because of an emergency or a legal obligation; or (iii) give You instructions that We believe are necessary for health or safety, or for the quality of the Telecom Services.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Intellectual Property Rights in:
 - 6.1.1 Your Material shall (subject to the rights of any third party) belong to You; and
 - 6.1.2 any documents, plans, drawings, specifications and data provided by Us ("**Our Materials**"), or anything produced or used by Us in the supply of the Equipment and/or the Telecom Services, the Form, and/or this Agreement belong to Us and may not be reproduced without Our prior written consent.
- 6.2 You warrant that Your Material and its use by Us for the purposes of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party and You shall indemnify Us in full and on demand against all losses, damages, legal fees, costs, expenses or other claims arising from any such infringement or alleged infringement.

7 LIABILITY

- 7.1 Nothing in the Agreement shall restrict Our liability for death or personal injury resulting from Our negligence or that of Our employees while acting in the course of their employment.
- 7.2 We shall not be liable to You for any loss of revenue, profit, opportunity, goodwill, data, business, contracts, anticipated savings or any indirect or consequential loss or damage howsoever arising in connection with this Agreement (whether by breach of contract, tort, breach of statutory duty or otherwise of Us, Our employees, agents or subcontractors).
- 7.3 Our liability (whether for breach of contract, tort, breach of statutory duty or otherwise) arising out of or in connection with the performance or non-performance of Our obligations under this Agreement shall be limited to the higher of any amount recovered by Us under a relevant policy of insurance or £500,000 in respect of any one incident or a series of related incidents and £1,000,000 in total in any 12 month period.
- 7.4 You shall indemnify Us against any claims, losses, expenses, damages and liability incurred by or awarded against Us arising out of any act, omission or breach by You, Your employees, agents or subcontractors relating to the Telecom Services and/or this Agreement.
- 7.5 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control ("**Force Majeure**").

8 CHARGES AND PAYMENT

- 8.1 You must pay Our charges for the Telecom Services ("**the Charges**"). You can request the details of the applicable Charges from Our Customer Care Department. All Charges quoted prior to the commencement of this Agreement are valid for 30 days only, after which time they may be altered by Us without giving notice to You.
- 8.2 The Monthly Service Charge (as detailed on the Form) is the minimum amount payable by You per month for the term of the Agreement. If you decide to cease or transfer any of the services for any reason the Monthly Service Charge will not be varied. Any additional Telecom Services not included within the Monthly Service Charge will be charged at the agreed rate.
- 8.3 We may change the Charges at any time upon giving You at least 14 days prior notice, provided that in exceptional circumstances we may change the Charges on less than 14 days notice. Such exceptional circumstances may include where Our suppliers change their charges to Us on less than 14 days notice.
- 8.4 You agree to pay all Charges billed by Us within 14 days of the date of each bill by direct debit unless otherwise agreed in writing by Us. You shall sign and maintain for the duration of the Agreement a variable direct debit mandate which will enable Us to withdraw the amount of the Charges from Your nominated bank account.
- 8.5 Usage Charges payable by You shall be calculated with reference to data recorded, logged or obtained by Us whether or not the Telecom Services have been used by or with Your authority and irrespective of any fraud and not by reference to any data logged or recorded by You.
- 8.6 All sums referred to in the Agreement are exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced, and which shall be charged in addition.
- 8.7 If the Agreement is terminated part way through a month, no refund shall be due to You and nor shall We pro rata any Charges payable by You in respect of that month for the Telecom Services.

9 TERMINATION

- 9.1 We can suspend the Telecom Services or end the Agreement in whole or in part at any time without giving advance notice to You if (i) You become insolvent or unable to pay your debts as they fall due; (ii) You are materially in breach of a term of the Agreement and upon being given notice of that breach in writing fail to remedy that breach, if capable of remedy, within 14 days; or (iii) an event of Force Majeure prevents a party from performing its obligations under this Agreement for a continuous period of 30 days or more.
- 9.2 If the Agreement is terminated, You shall return any Equipment which You have not paid for in full and, except as otherwise provided in this Agreement, shall pay any outstanding charges or costs to Us within 14 days of the date of termination.

10 BROADBAND SERVICES

- 10.1 The provisions of this clause 10 shall apply where the Broadband Service is provided by Us.
- 10.2 We can only supply the Broadband Service to You if You (i) have the necessary lines and equipment; (ii) pass any credit check which we carry out; and (iii) You provide Us with correct and complete information as part of the process to register You for the Broadband Service.
- 10.3 We will offer a Technical Support Helpline to provide information and advice to You on any technical issues relating to Your use of the Broadband Service. Calls to the Technical Support Helpline are charged at premium rate. All calls may be monitored and recorded for training and security purposes.
- 10.4 Given that We do not produce the content made available to You as part of the Broadband Service, We do not guarantee or warrant the completeness or accuracy of the content.
- 10.5 You must ensure that passwords and user names used in connection with the Broadband Service are kept confidential and are only used by You or people authorised by You. You must inform Us immediately if You know or suspect that a user name or password has been disclosed to an unauthorised person or is being used in an unauthorised way. You must not change or attempt to change a user name without Our written consent.
- 10.6 We reserve the right to (i) suspend user names and password access to the Broadband Service if at any time We think that there has been or is likely to be a breach of security; and (ii) ask You to change any or all of the passwords You use in relation to the Broadband Service.
- 10.7 We do not guarantee that the Broadband Service is secure and We do not guarantee the prevention or detection of any unauthorised attempts to access the Broadband Service.
- 10.8 You must use the Broadband Service at all times in accordance with Our Fair Use Policy as published on Our Website from time to time. Failure to do so will entitle Us to take the action set out in our Fair Use Policy.
- 10.9 Where We provide software to You to enable You to use the Broadband Service, You will have a non-exclusive, non-transferable licence to use such Software solely for the term and purposes of the Agreement.

11 GENERAL

- 11.1 The Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations (except for fraudulent misrepresentation).
- 11.2 If You have a complaint in relation to the Telecom Services, You should contact Our Customer Care Department. In accordance with Ofcom regulations, a Code of Practice for Complaints is in place. The procedure set out in this Code will be followed should a complaint be received. Please contact Our Customer Services Department for a copy.
- 11.3 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 11.4 The Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.

APPENDIX

FAIR USAGE POLICY

Introduction

Our Fair Usage Policy is designed to ensure You and all Our customers experience the best on demand, quick and reliable internet service possible. This policy, including its usage restrictions, is in addition to the terms set out in this Agreement.

Due to the shared nature of broadband connectivity, the actions of Our customers affect the connectivity and performance of others utilising the Broadband Service. While We make significant efforts to ensure that all Our customers receive acceptable bandwidth availability, there is the possibility that neighbouring customers may capitalise on the available bandwidth. To limit this possibility, this Fair Usage Policy has been introduced.

The purpose of a Fair Usage Policy

It is important to understand that without any Fair Usage Policy it is not unusual for ISP's to have 5% of their customer base utilising in excess of 50% of the available capacity. This has an ongoing detrimental effect on the remaining 95% of the customers who are using the broadband connection within acceptable limits.

Employing this Fair Usage Policy ensures that Your experience is at its best at all times and allows Us to remain competitive with wholesale prices to our partners. As a provider that distinguishes itself on quality connectivity for use with convergent applications such as IP Telephony Services, We are not prepared to compromise the Broadband Service for a relatively small proportion of the client base and as a result of this policy the majority of Our customers will benefit from faster speeds, less contention and an improved service level.

It is commercially impossible to offer a truly "unlimited" Broadband Service due to the way raw wholesale services are sold by organisations such as BT Wholesale.

What are the Fair Usage Limits?

We have introduced the following fair usage limits below. These limits are for each calendar month and are not from the time of activation of the Telecom Services.

Type of Connection	Fair Usage Limit
Home, SOHO and Business Connections; Including; 500 Pro/Plus - 512kbps, 1000 Pro/Plus - 1MB, 2000 Pro/Plus - 2MB, 8000 Pro/Plus - up to 8MB 16000 Pro/Plus - up to 16 MB ADSL2+ PCL2+SOHO 40GB /Business 40GB PCL Fibre / Enhanced UP PCL SDSL/Enhanced UP /SDSL(M)	40GB per month
PCL Fibre 100 PCL Fibre2 100	100GB per month
PCL Fibre 200 PCL Fibre2 200	200GB per month
PCL Together PCL Residential Broadband	10GB per month
PCL2+SOHO /Business PCL Business Connect Unlimited - Option 2	Unlimited Packages are subject to a 250GB fair usage. If you exceed this limit or, in our opinion, your activities are excessive and other customers may be detrimentally affected, we will notify you in writing that your usage is beyond the acceptable limit. If this usage persists and the levels of activity do not decrease in line with our instructions, we may terminate or suspend your Services. In extreme circumstance, we reserve the right to immediately suspend your services without prior notification.
PCL Business Connect 80GB - Option 1	As both connections will use in load balance mode (2 x PCL Business 40GB), the usage should be 90% accurately spread over both 40GB connections, over usage will be billed separately for each broadband line. Therefore the usage included should be around 80 GB.
PCL Business Connect 400GB - Option 3	As both connections will use in load balance mode (2 x PCL Fibre 200GB), the usage should be 90% accurately spread over both 200GB connections, over usage will be billed separately for each broadband line.

How much usage actually is this?

To provide You with some information on how much data this actually represents some details have been included below.

Data Use	10GB	40GB	100GB	200GB
Standard text/HTML emails	7500 email	30,000 emails	75000 email	150000 email
Transferring Digital Photos	2500 photos	10,000 photos	25000 photos	50000 photos
Standard Surfing (hours across 1 PC connected to the broadband link)	1250 hours	5,000 hours	12500 hours	25000 hours
Download mp3 music (around 6 MB per song)	1700 songs	6800 songs	17000 songs	34000 songs
Download movies (2 GB per movie)	5 Movies	20 Movies	50 Movies	100 Movies
Watching BBC iPlayer/YouTube (1.5 GB per hour HD)	6 Hours	26 Hours	60 Hours	120 Hours

What will happen if you exceed the Fair Usage Policy?

Usage quota levels are dynamically calculated for each user. We will continue to review network usage levels and inform You if we feel Your usage hinders the operation of a high quality service for Our other users and discuss potential ways this could be reduced.

If You regularly use the Broadband Service outside of these guidelines and We believe this is unfairly affecting Our other customers experience of the Broadband Service we will manage Your bandwidth in such a way that may result in reduced service speeds. We also reserve the right to transfer Your Broadband Service to another service provider and/or make excess usage charges for any exceptionally unusual activity (charged at £1.50 per GB over the Fair Usage Limit).

Our Fair Usage Policy is applicable to all customers on unmetered based accounting however this policy will only actually affect You if You make inappropriate use of the Broadband Service.

Broadband Speeds

We will always offer the best speed possible on the line based on the selected product. However, download speeds may vary and the actual download speed will fall within a range. Any estimated information is based on the speeds achieved by lines of a similar type with a similar broadband service. The actual speed will generally be within 1-2Mbps higher or lower than your estimated speed.

The actual speed is dependent on several factors. For example:

- the chosen product option;
- the number and speed of devices using the connection at the same time;
- whether a wireless or wired connection is used;
- the speed of the websites visited;
- the time of day (speeds can be lower at peak times (evenings and weekends)).

Estimates based on postcode (rather than phone number) are less accurate and should be treated with caution. Where we are able to provide a date for future fibre optic broadband availability, it is indicative only and subject to change.

Broadband Stabilisation Period

During the first ten days of the new service, the speed may go up and down as the broadband equipment tests the reliability of the line to achieve the most stable speed. The broadband router should be left on during this time.

During the first 24 to 48 hours as the service adapts to the characteristics of your line you may experience some fluctuation in performance along with occasional (brief) connection drops. This is normal and the service will soon stabilise. If the problem persists after this time, please contact us.

TERMS AND CONDITIONS OF BUSINESS

MAINTENANCE AGREEMENT -PORTSMOUTH COMMUNICATIONS LTD Business Customers

- 1. Definitions**
- In these conditions, unless the context requires otherwise:
- 1.1 'Additional Equipment' means additional equipment supplied subsequent to the supply and installation of the Equipment.
 - 1.2 'Equipment' means the items of equipment set out on the front page of this Agreement, and shall in relation to the obligations of the customer include where applicable the Additional equipment.
 - 1.3 'Maintenance Services' means the provision of maintenance as defined in clause 2 below.
 - 1.4 'you' means the business who agrees to the Contract for Maintenance Services from us;
 - 1.5 'Commencement Date' means the date set out in the Contract and being the date upon which this agreement is stated to commence.
 - 1.6 'Conditions' means the terms and conditions of maintenance set out in this document and any special terms and conditions agreed in writing by us
 - 1.7 'Contract' means the maintenance Contract on pages 1 and 2 of this document.
 - 1.8 'Place of Use' means the site where the equipment is installed and operated
 - 1.9 'Maintenance Charges' means our charges for the Maintenance Services as detailed in the Contract.
 - 1.10 'us, we, our' means Portsmouth Communications Limited, Company registration number 3886201, whose registered office is at:
 - Unit 13 Regent Trade Park
 - Barwell Lane
 - Gosport
 - Hampshire
 - PO13 0EQ
- 2. Maintenance Services**
- 2.1 We will provide you with Maintenance Services in respect of the Equipment subject to the following conditions from time to time in force which, shall constitute the entire Maintenance Contract between us and you.
- 2.2 Maintenance Services shall comprise:
- 2.2.1 maintenance provided by us in respect of the Equipment at the Place of Use.
 - 2.2.2 upon receipt of a request from you, the inspection testing and diagnosing (by attendance on site or remotely) by us of any fault reported in an item of Equipment: and
 - 2.2.3 the carrying out by us of such repairs replacement of parts cleaning or adjustment as we shall judge necessary to remedy the said fault.
- 2.3 The Maintenance Services will be provided as per the cover level chosen and defined in schedule 1 of this agreement. We will endeavour to respond to reported faults within the level of service taken by you but at no time will a failure by us to do so be construed as a material breach of the Contract
- 3. Exclusion from Services**
- The Maintenance Services will not extend to:
- 3.1 modifications, alterations or additions to the Equipment or removal of the same.
 - 3.2 peripheral items and consumables (lists of which are available from us);
 - 3.3 items which in our opinion can no longer be subject to economical maintenance and for which we have submitted a refurbishment cost estimate payable in addition to the Maintenance Charges unless work is authorised within 30 days of the date of the estimate;
 - 3.4 defects resulting, in our reasonable opinion, from misuse or neglect of or accident to the Equipment or failure to follow the instructions or our advice or the Equipment manufacturer;
 - 3.5 visits to provide Maintenance Services or other services in addition to those (if any) specified in clause 2.3 and those where you have called us out to carry out maintenance, repairs and replacements or otherwise in cases where the Equipment has been damaged or does not work where the Equipment has been damaged other than by reason of fair wear and tear arising from the correct operation of the equipment in our opinion.
 - 3.6 the repair or replacement of parts which we require to carry out away from the site named overleaf but which you for security reasons or otherwise is unwilling to release to us;
 - 3.7 electrical work external to the Equipment such as power supply or maintenance of accessories, or other devices not furnished by us.
 - 3.8 repair of damage resulting from accident, transportation, neglect or misuse, failure of electrical power, surge of electrical power, lightning strike fire or flood, vandalism or burglary.
 - 3.9 the transportation or relocation of the Equipment except where the same has been performed by or under the direction of us
 - 3.10 performing maintenance or repair to the Equipment if you or any third party except for our engineers have performed or attempted to perform any maintenance or services to the Equipment or have tampered in any way with the Equipment.
 - 3.11 overhauling or refurbishing parts or electro-mechanical components, necessitating to removal to our workshop for report and estimate.
 - 3.12 replacement of tapes and other accessories.
 - 3.13 The maintenance or repair of any extension wiring external to equipment, cabinets and enclosures.
 - 3.14 battery maintenance or replacement of batteries or individual cells or maintenance of any two-wire devices.
 - 3.15 Any defect or error in any software used upon or in association with the Equipment.
 - 3.16 Systems that are end of support will be maintained on a reasonable endeavours basis. In the event that the systems CPU fails or the system requires a software update(s) the customer will need to replace the telephone system with a new system at their own cost
- 4. Maintenance Charges**
- 4.1 The period of maintenance will start on the Commencement Date. It will continue for the Minimum Term and then from year to year until terminated at any time by either party giving the other not less than ninety (90) days written notice prior to the Anniversary date.
- 4.2 Maintenance Charges are payable in advance on or before the Commencement Date as set out on the front page of this Contract
- 4.3 Additional services (including emergency visits outside the hours specified in condition 2.3) and the cost of replacement parts not covered by a warranty given by us will be the subject of extra charges in accordance with our Conditions and usual charges then in force payable in 30 days of the date of our invoice.
- 4.4 We may:
- 4.4.1 from time to time we may increase the charge for maintenance to account for cost increases. If the increase exceeds 10%, you may by writing to us within 20 days of the invoice for the increased price terminate the Contract. If you terminate in this way then you will not be entitled to a refund for any Maintenance Charges already paid.
 - 4.4.2 you will not be allowed to terminate the Contract if the increase has resulted from additions to the system..
 - 4.4.3 if you do not pay the adjusted Maintenance Charges on the due date we may terminate the Contract immediately and without notice.
- 4.5 our charges are payable without any deductions or withholding of any kind but with the addition of VAT.
- 4.6 time for payment shall be of the essence and Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Barclays Bank plc's base rate from time to time in force or we also reserve the right to charge interest pursuant to the Late Payment of Commercial Debts Regulations 2002 from time to time such interest shall accrue at such a rate after as well as before any judgment. We also reserve the right to charge an administration charge.
- 4.7 Subsequent Maintenance Charges in respect of Additional Equipment supplied to you after the Commencement Date shall be charged at our usual rates at the time of such supply and shall be otherwise upon the terms of the Contract and Conditions unless expressly varied in the document supplied by us to you at the time of supply.
- 5. Customer's obligations**
- To facilitate the provision by us of Maintenance Services you shall:
- 5.1 you warrant and undertake to us that you are the owner of the Equipment and that you have full power and authority to enter into this agreement and permit us to perform the Maintenance Services and any additional services.
 - 5.2 you undertake to indemnify and hold harmless us against any loss or damage that we may suffer as a result of a breach by you of clause 5.1 above.
 - 5.2a to grant us such access to the Place of Use as we shall from time to time reasonable require in order to discharge its obligations hereunder.
 - 5.3 to take all reasonable precautions to protect the health and safety of our employees agents and sub-contractors whilst on your site.
 - 5.4 keep and operate the Equipment in a proper and prudent manner and ensure that only competent trained employees are allowed to operate it;
 - 5.5 use the Equipment in a suitable environment with proper power supplies and in accordance with instructions and advice of the Equipment manufacturer and us;
 - 5.6 not move the Equipment or make any addition, modification or adjustment to it without our prior written consent; you or a third party shall not specifically maintain, service, repair, tamper or alter Equipment or any wiring.
 - 5.7 maintain and make available to us records of the operation, maintenance and any malfunction of the Equipment; and
 - 5.8 provide at such times as we reasonably require and at no cost to us all documentation, software, materials and services necessary for the maintenance and testing of the Equipment, access to the Equipment, use of your workshop and repair facilities and the co-operation of your personnel in diagnosing and overcoming any malfunction of the Equipment.
 - 5.9 if the Equipment is to be connected to a telecommunications network you shall comply with all the network providers requirements and at your expense arrange the provision of any equipment for this purpose.
 - 5.10 pay us an additional fee at our usual rates for any reprogramming of the Equipment by us as a result of an error by you in programming the Equipment.
 - 5.11 pay to your network provider all fees due in relation to your Equipment or otherwise.
 - 5.12 notify us in writing if you are re-locating the Equipment
 - 5.13 ensure that you back up your data in relation to your Equipment.
 - 5.14 to pay us at our usual rates for the provision of additional Maintenance Services or other services where you have called us out to carry out maintenance, repairs and replacements or otherwise in cases where the Equipment has been damaged or does not work where the Equipment has been damaged other than by reason of fair wear and tear arising from the correct operation of the equipment in our opinion.
- 6. Liability**
- 6.1 The following provisions set out our entire liability (including any liability for the acts and omissions our employees agents or sub-contractors) to you arising out of:
- 6.1.1 any breach of its contractual obligations arising under this Contract.
 - 6.1.2 any misrepresentation, mis-statement, tort, act or omission arising out of this Contract.
- 6.2 An 'Event of Default' is any act of omission on the part of us or our employees, agents or sub-contractors falling within clause 6.1
- 6.3 We shall use our reasonable endeavours to keep the Equipment in efficient operating condition but we shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned
- 6.4 We shall have no liability for any damage to your property unless occasioned by our negligence.
- 6.5 Except in the case of death or personal injury caused by our negligence, our liability under or in connection with this Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed the annual Maintenance Charge.
- 6.6 We shall not be liable to you in respect of loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same
- 6.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 6.8 If an Event of Default occurs then you must give us notice in accordance with these Conditions upon receipt of which, starting with the next working day we will have 28 days to remedy such defect.
- 7. Replacement parts**
- We reserve the right to supply new, second-hand or reconditioned replacement parts in the performance of our duties hereunder
- 8. Force majeure**
- If our performance of this agreement or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of us, will allow us (upon giving prompt notice to you) to be excused from performance to the extent of the prevention, restriction or interference, but if we are so affected we shall use our reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance under this agreement whenever such causes are removed or diminished.
- 9. Commencement and term of agreement**
- 9.1 This Contract starts on the Commencement Date and remains in force until it is terminated in accordance with these Conditions not earlier than 3 years from the Commencement Date unless determined in accordance with the provisions of clause 4.1 or clause 10.
- 9.2 Following the 3rd anniversary of the Commencement Date the Contract will then continue on a yearly basis thereafter unless terminated in writing by either side upon giving ninety (90) days notice to the other such notice to expire on the anniversary of the Commencement Date or by termination in accordance with clause 4.1 or clause 10.
- 10. Termination on default**
- We may at any time by written notice (in addition to any other rights) terminate this agreement or suspend the performance of all or any of our obligations under these Conditions or the Contract immediately and without liability for compensation or damages if:
- 10.1 you fail to comply in all material respects with this agreement;
 - 10.2 you become bankrupt, have a receiving order made against you, or make any arrangement with your creditors generally or take or suffer any similar action as a result of debt;
 - 10.3 you convene a meeting of your creditors or suffer a petition to be presented or a meeting to be convened or other action to be taken with a view to your liquidation except with the written approval of us for the purposes of and followed by amalgamation or reconstruction;
 - 10.4 a receiver or administrative receiver is appointed of any of your property;
 - 10.5 if we terminate the agreement in relation to clauses 10.1-10.4 above then we will be able to retain the annual Maintenance Charges if they have been paid and no refund will be due to you.
- 11. Not assignable**
- 11.1 We reserve the right to assign the Contract and to sub-contract all or any of its obligations.
- 11.2 This agreement is personal to you and you may not without our prior written consent:
- 11.2.1 assign or dispose of it
 - 11.2.2 part with any interest in it; or
 - 11.2.3 grant any lease or licence or delegate any of the rights conferred by it.
- 12. Indemnity**
- You agree to indemnify and keep indemnified us from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by us resulting from a breach of this agreement by you
- 13. Third party rights**
- No person other than us, or any person to whom we assign the Contract and you shall acquire any enforceable rights under or in connection with this agreement.
- 14. Variation**
- No variation or amendment of this agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties
- 15. Successors and Assigns**
- This agreement shall be binding upon and endure to the benefit of our and your respective successors and assigns
- 16. Severance**
- If any provision of this agreement is declared by any judicial or other competent authority to be void, voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of us it may be severed from these Conditions.
- 17. Acceptance of these Conditions**
- You must sign and return these Conditions to us. If you do not we do not have to honour the order. If you place an order and we honour that order even though you have not signed and returned these Conditions by placing the order you are deemed to have accepted these Conditions.
- 18. No Set-Off**
- You agree with us throughout the term not to set off for any reason any money payable by you to us.
- 19. Law and jurisdiction**
- The law applicable to this agreement shall be English law and the parties consent to the jurisdiction of the English courts in all matters affecting this agreement.
- 20. Notices**
- 20.1 Any demand or notice given under this deed shall be in writing and may be served:
- 20.1.1 personally,
 - 20.1.2 by registered or recorded delivery mail,

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- 20.1.3 by facsimile transmission (confirmed by post), or
- 20.2 Each party's address for the service of notice shall be its above or overleaf mentioned address or such other address as it specifies by written notice to the others.
- 20.3 A notice shall be deemed to have been served:
 - 20.3.1 if it was served in person, at the time of service,
 - 20.3.2 if it was served by post, 24 hours after it was posted, and
 - 20.3.3 if it was served by facsimile transmission, at the time of transmission.
- 21. Company Warranties**
 - 21.1 We warrant and undertake with the Customer;
 - 21.1.2 to perform any additional service within a reasonable time of being so requested by you;
 - 21.1.3 that you will enjoy quiet possession of any such replacement parts and that the same will be of satisfactory quality and reasonably fit for their purpose.
 - 21.2 we do not warrant that the Maintenance Services (or the additional services) will cause the Equipment to operate without interruption or error.
 - 21.3 we do not warrant to maintain or repair Equipment where the supplier or manufacturer has ceased to supply the Equipment.
 - 21.4 subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the performance by us of the Maintenance Services or additional services hereunder are hereby excluded.
- 22. Confidentiality**
- 22.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this agreement save that which is:
 - 22.1.1 trivial or obvious and is in the public domain but not by breach of your undertaking under this clause;
 - 22.1.2 already in its possession other than as a result of a breach of this clause;
- 22.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 22.1 above by its employees agents and sub-contractors.
- 23. Entire agreement**

We shall not be liable to you for loss arising from or in connection with any representations agreements statements or undertaking made prior or after the Commencement Date other than those representations agreements statements and undertakings confirmed by a duly authorised representative of us in writing or expressly incorporated or referred to in these Conditions.
- 24. Large Print**

Copy available in large print upon request.

Contract caveats:

Systems that are no longer manufactured will be maintained on a reasonable endeavors basis. In the event that the system control unit fails the customer will need to replace the entire telephone system including handsets if required with a new system at their own cost.

Excludes extension cabling and sockets, analogue handsets, DECT (cordless) handsets, software assurance, and any non –proprietary Mitel equipment(e.g patch leads, mod taps, PC’s, hubs, switches, headsets, third party applications)

System username and password log in details must be provided prior to commencement of agreement.

System remote access details i.e Modem/DDI/IP address must be provided prior to commencement of agreement where available