

## TRANSWORLDCOM LIMITED GENERAL TERMS AND CONDITIONS

Unless expressly stated by TransWorldCom Limited (TWC) in writing, all quotations are made and all orders are accepted on the following terms and conditions:

### 1. DEFINITIONS

In this Contract:

*"Acceptable Use Policy"* means our policy for the use of internet related services, as set out on our Website, such as may be revised by us from time to time by posting any updated version on our Website.

*"Authorisation"* our authorisation to provide communications networks and services pursuant to the OFCOM general authorisation regime. *"Average Monthly Call Charges"* the average monthly call charges calculated by reference to your last three-monthly bills.

*"Cancellation Charge"* the charge for your cancellation or our termination (pursuant to Clause 14.4 and 16.1) of the Services prior to the end of the Initial Term or any Extended Term.

*"Committed Spend"* the amount set out in the Order which you commit to pay in respect of call charges during each month of the Initial Term and any Extended Term.

*"Contract"* these terms and conditions, the Order and any other document referenced in them as forming part of this Contract.

*"Data"* is data held about "you".

*"DPO/ Data controller"* data protection officer or person in control of data. *"Entitled Devices"* means those products listed within the MSA Contract.

*"Equipment"* or *"Products"* our equipment as specified in the Order which we may loan to you for use in respect of the Services.

*"Extended Term"* in respect of the Contract, any renewal period of 24 calendar months or a term equal to the Initial Term, whichever is the longer in accordance with Clause 3.

*"Facility Limit"* the monthly financial limit applied to the Charges of 125% of the value of the estimated call spend (set out on the Order).

*"Hardware"* your equipment, network, systems and software which you use in connection with the Services. *"Helpdesk"* our first line point of support, details of which are attached to the Order or are otherwise set out on our Website.

*"Initial Term"* the period of 60 months commencing on the Start Date and ending on the anniversary thereof.

*"MSA"* means the Order for a Managed Services Agreement – *"CHA"* means the Order for a Contracted Hours Agreement.

*"Network"* means our suppliers telecommunications network and equipment which we use to provide the Services.

*"Order"* your order for Services which has been accepted and signed by us and which sets out the scope of the Service, the relevant Charges and any special terms which are particular to those Services, or, specifically for mobile, the introduction to Airtime Service Providers signed by you and delivered to us;

*"Premises"* your premises at which the Equipment will be installed.

*"Service Failure"* means any failure, error or defect in the provision of the Services by us, but excluding:

- any failure, error or defect arising from, caused by or contributed to by your acts or omissions or those of third parties (including other providers of telecommunications, computers or other equipment or services including internet services), or
- any failure, error or defect arising as a result of causes beyond our reasonable control

*"Service"* means any one of the services or ancillary services described in an Order and *"Services"* means any combination of two or more such services.

*"Service Hours"* means our normal working hours of 8.00am to 6.00pm UK time, Monday to Friday, excluding UK public holidays.

*"Out of Hours"* means all hours from 6.00pm to 8.00am UK time, Monday to Friday, plus all day Saturday and Sunday, including UK public holidays.

*"Software"* means the software provided by us to you for the purposes of enabling you to use the Services including all associated documentation.

*"Start Date"* the date of go live the start of the Services.

*"we"* or *"us"* or *"our"* is TransWorldCom Limited.

"Website" our website at [twcitsolutions.com](http://twcitsolutions.com)

"you" or "you're" the customer specified in the Order.

"Agreement" means the terms of an Order and the terms and conditions set out herein.

"Airtime Services" means the connection to and use of a telecommunication network for mobile telephone calls.

"Airtime Services Agreement" means an agreement between an Airtime Services Provider "you" for the supply of Airtime Services.

"Airtime Services Provider" means a third-party supplier of Airtime Services introduced to "you" by "us".

"Associated Airtime Services Agreement" means the Airtime Services Agreement in connection with which the Products are supplied for use.

"Minimum Period" means the minimum term of the Airtime Services Agreement as stated therein.

"Products" means the equipment supplied to the "you" as stated in the Order;

## 2. APPLICATION OF TERMS

2.1 These terms and conditions together with the Order and any other document referred to in them form the contract between us ("Contract") for the provision of the Services.

2.2 These terms and conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 Your attention is drawn in particular to Clause 13 Limitation of Liability and you acknowledge that you understand and agree to the provisions of Clause 13.

2.4 Whereupon the Product and/or Service delivered by us under this Order is for Mobile and Airtime Services, terms and conditions are confirmed from Clause 24 onwards, further to the heading Mobile & Airtime Service Only; Specific Terms and Conditions. Clauses 3 through to 23 are applied as general terms of business only for the Agreement, though are binding where necessary.

## 3. DURATION OF CONTRACT AND TERM

3.1 The Contract shall begin on the date of signature of the Order by you, and unless terminated earlier in accordance with Clause 16, the Contract shall continue for the Initial Term and subsequent 36-month term or a term equal to the Initial Term, whichever is the longer, unless you give written notice to us not later than **90 days before** the end of the Initial Term or the relevant Extended Term as the case may be and not before 120 days. You acknowledge that 90 days' notice to terminate the Contract at the end of the Initial Term or any Renewal Term is a reasonable period in order for us to mitigate any costs, expenses, losses or damages which we may incur as a result of the termination of our contracts with third party suppliers involved in the provision of the Services to you, save for those which are managed on an annual subscription basis, such as Microsoft licensing - in this instance, irrespective of the termination date, you will still be liable for payments made up to and including the subscription end date. For the avoidance of doubt, the Start Date of the term and any Extended or Renewal Term shall be calculated from the date when the last product or service, as part of this Agreement, goes live.

3.2 You may at any time add additional Services to the Contract or request a tariff review, and such additional Services or revised tariff agreed with us will be set out in a new Order. The new Order shall form a new Contract with us subject to these terms and conditions, which shall supersede the previous Contract. The new Contract shall begin on the Start Date for the new Services and shall continue in respect of all existing and new Services in accordance with Clause 3.1.

## 4. SERVICES

4.1 Where SLA's are stated for the provision and/or installation of products or services and these SLA's are provided in line with third-party assurances, we accept no liability whatsoever for failure to meet these SLA's or the deadlines therein.

4.2 We will commence the Services within a reasonable time after the Start Date and will provide the Services in accordance with the terms of this Contract. Any dates which we give to you are estimates only and time shall not be of the essence with respect to such dates.

4.2 Services are provided during Service Hours. If you request us to carry out any part of the Services Out of Hours, unless stipulated and agreed to the contrary within the Order, we may agree to do so at our sole discretion and reserve the right to charge for such work in accordance with our standard time and materials rates in force at the time. Any charges applicable will be notified to you, where possible, in advance of work being carried out and such acceptance will imply you are willing to pay additionally for Out of Hours work. For the avoidance of doubt, unless you have specifically engaged us to carry out support services Out of Hours (UK), as per a 24/7 CHA or MSA contractual agreement, should you require assistance, charges equal to our standard, hourly out-of-hours costs - time-and-a-half for evenings and Saturdays or double-time for Sunday's and Bank Holidays - will apply.

4.3 Where set out in the Order that we shall provide you with Equipment as part of the Services, we shall deliver such Equipment to your Premises as soon as reasonably practicable after the Start Date. Unless we agree otherwise, you will be responsible for installation of any Equipment.

4.4 We warrant that the Services will be performed in accordance with all applicable laws and regulations and with reasonable skill and care. All other conditions, warranties or other terms which might be implied or incorporated into this Contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law.

4.5 Notwithstanding the foregoing, we:

4.5.1 do not warrant that your use of the Services will be uninterrupted or error-free; nor that the Services will meet your requirements; and

4.5.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities (other than as provided by us as part of the Services), such as the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities. By signing this agreement, you indemnify us against any claim for loss of business caused by failures.

4.6 If you experience any Service Failure, you shall notify us via our Helpdesk, and we shall use all reasonable endeavors to restore the Services to you as soon as reasonably practicable.

4.7 We shall not be liable for any failure or defect in the Services caused by any fault or defect in your telecommunications equipment.

4.8 We are not responsible for any degradation of service(s) due to the movement or re-arrangement of equipment.

4.9 We reserve the right to provide fixed line services to you by using Local Loop Unbundling or 'LW' technology ("LLU") and may at any time on written notice to you transfer you to our LLU service without affecting the scope or standard of the Services.

4.10 On the day that we transfer you to our LLU service you may experience a temporary loss of service for up to 24 hours. Afterwards you may also need to reset your access numbers and/or passwords and may no longer be able to access some telecommunications services which you purchase from other providers.

4.11 We may from time to time and without notice to you change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. Where practicable, we will give you at least 30 days' notice of any change.

## **5. ALLOCATION AND USE OF TELEPHONE NUMBERS**

5.1 Where we allocate any telephone numbers or codes to you as part of the Service, you acknowledge that you do not acquire any legal, equitable or other rights in relation to numbers or codes.

5.2 We may, upon written notice to you, withdraw or change any numbers or codes where we are required to do so. You acknowledge that any such withdrawal or change of any numbers or codes is outside of our reasonable control and that we will not be liable to you for any loss or damage which you may suffer or for any costs or expenses which you may incur for any interruption to your business as a result of the same. By signing this agreement, you indemnify us from any losses caused as a direct result.

5.3 You may not sell or transfer or seek to sell or transfer any numbers or codes allocated by us. You may port numbers to us and may also port numbers to other carriers with whom we have porting agreements. Porting is agreeable subject to all payments being up to date.

## **6. YOUR USE OF THE SERVICES**

6.1 The Services are provided only for use in the course of your business. You must use the Services only in accordance with our Acceptable Use Policy.

6.2 You agree that you will not use the Services in a way which would:

6.2.1 breach or cause us to breach any applicable laws or regulations;

6.2.2 compromise the security of our Network or Equipment or the Services by accessing, storing, distributing or transmitting any viruses, Trojan horses, worms, time bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;

6.2.3 enable or permit unauthorised access by you or any third party to data stored on our network;

6.2.4 do anything which would cause a degradation of service to any of our other customers;

6.3 During your use of the Services you shall not access, store, distribute or transmit any data or materials that are:

6.3.1 misleading, or misrepresentative of your identity or affiliation with any person; or

6.3.2 obscene, indecent, pornographic, offensive, defamatory, facilitates illegal activity; or promotes unlawful violence; or

6.3.3 discriminatory (based on race, sex, religion, nationality, disability, sexual orientation or age); or

6.3.4 in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence or promoting any illegal activity; and we reserve the right, without liability to you, to disable your access to any data or materials that breach the provisions of this Clause.

6.4 You shall not:

6.4.1 transmit or cause to be transmitted unsolicited marketing or advertising materials contrary to applicable laws; or

6.4.2 access all or any part of the Services in order to build a product or service which competes with the Services; or

6.4.3 use the Services to provide services to third parties; or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Clause 6; or

6.4.4 sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party.

6.4.5 breach or cause us to breach any applicable data protection legislation including, but not limited to, General Data Protection Rules;

6.4.6 lose or cause us to lose or breach or cause us to breach our Authorisation.

6.4.7 exceed our fair usage policy on applicable services (intermit) as published on our Website.

6.5 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by us arising from any breach of your obligations under this Contract including this Clause 6, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

6.6 You will ensure that your usage of the Services does not exceed the Facility Limit or cause congestion or otherwise disrupt our Network. You will give us not less than two (2) working days written notice of any advertising, promotion or other campaigns which may result in abnormal demands being placed on our network.

6.7 Where you have entered into a CHA or MSA Contract, without prior contact you will allow us to maintain, connect, access and manage your IT environment via remote and online technologies. For MSA, only Entitled Devices will be accessed.

## 7. YOUR OBLIGATIONS

7.1 In order for us to provide the Services you shall provide us with all necessary co-operation in relation to this Contract and access to such information as we may require, including but not limited to your Hardware, data, security access information and configuration services.

7.2 Subject to Clause 4.3 you are solely responsible (at your cost), for procuring and maintaining all necessary hardware, software, network facilities and telecommunications services which are required to access and make use of the Services, as well as all and any wayleaves, council or building planning, cabling or service permissions.

7.3 During the term of this Contract you shall:

7.3.1 ensure that your Hardware:

a) meets the minimum technical specifications as notified by us for compatibility with the Services; and  
b) is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations.

7.3.2 obtain all required licenses or other consents to enable us to have access to and use of your Hardware for the purpose of providing the Services including, but not limited to, any license rights in respect of any software which forms part of your Hardware;

7.3.3 comply with all applicable laws and regulations with respect to your activities under this Contract;

7.3.4 carry out all other responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary.

7.3.5 commit to exclusively use telecommunications services and equipment, provided by us, for all your telephone calls and connections. For the avoidance of doubt, calls may not be routed through any third-party service; this is based on your initial order to accept a telephone calls package as part of this agreement. To clarify, should this not be adhered to, we reserve the right to charge as per the Cancellation Charge definition.

7.4 We shall not be responsible for any delay or inability to provide the Services where this is caused by your breach of any of the obligations in this Clause 7.

7.5 We may disconnect any of your Hardware from our network if in our reasonable opinion it does not so conform with Clause 7.3 or if in our reasonable opinion it is liable to cause personal injury or damage to property or to impair the quality of the Services provided by us or to cause us to lose our Authorisation or to put us in breach of our obligations to any third party.

## 8. SECURITY AND DATA BACKUP

8.1 You are responsible for the security of your data and your use of the Services. You shall take all reasonable steps to prevent any loss of or damage to data, or any unauthorised access to, or use of, the Services including but not limited to:

8.1.1 ensuring all passwords are in an appropriately secure format and properly protected against loss or unauthorised access; and

8.1.2 taking regular back-ups of all of your data used with or stored as part of the Services; and

8.1.3 employing appropriate security devices including virus checking software; and

8.1.4 having appropriate disaster recovery processes in place.

8.2 Where you are or become aware of any matters which you know or ought reasonably to be expected to know constitute a threat to the security of the Services, you will promptly notify us of such matters.

8.3 Treat all data with care and in accordance with your own internal GDPR practices. If any loss of data occurs or any data threat therein it must be reported to your DPO and we must also be notified should our business be directly affected but are indemnified and limited against all and any liability.

## 9. EQUIPMENT

9.1 From time to time, we may agree to provide you with a short-term loan of Equipment for use with the Services. Where you are provided with such Equipment, you shall, always:

9.1.1 use the Equipment only in connection with the Services, and for no other purpose;

9.1.2 use reasonable endeavours to keep the Equipment free from any loss or damage;

9.1.3 notify us promptly of any malfunction, defect, loss or damage to the Equipment, and return the Equipment to us promptly for repair or replacement at our sole discretion;

9.1.4 not sell or loan the Equipment to any person or create any charge lien or other encumbrance over the Equipment; and

9.1.5 insure the Equipment against loss or damage caused by any accident or your negligence or that of your employees, agents or subcontractors with a reputable insurance firm to the full replacement value of the Equipment.

9.2 Equipment shall be returned to us promptly following our request for you to do so, and in any event at the end of the loan period or upon expiry or termination of this Agreement.

9.3 The Equipment is owned by us, or our suppliers or licensors, and no title in any Equipment will pass to you under this Contract.

9.4 You shall allow us and our employees or subcontractors access to your Premises at any time (during normal business hours) on reasonable notice to install (subject to Clause 4.3), inspect, test, maintain or otherwise deal with the Equipment.

9.5 You shall indemnify us against any claims, proceedings or threatened proceedings from third parties (including other customers) and against any loss or damage suffered by us arising from your use of the Equipment where such claims and/or losses arise from the acts or omissions of you or your agents or subcontractors, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

9.6 You shall authorise us or our designated agent to act on your behalf should it be necessary for us to contact your hardware, utility or service provider in connection with your service. Additionally, you shall authorise the release of any information from any your providers specifically to carry out all services to the best of our ability.

## **10. CHARGES AND PAYMENT**

10.1 In consideration for the Services, you shall pay the Charges with effect from the Start Date in accordance with the payment terms set out in the Order.

10.2 All amounts payable under this Contract are exclusive of value added tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.

10.3 We shall issue invoices in accordance with the payment terms set out in the Order and you shall pay our invoices within 14 days of the date of the invoice.

10.4 You must notify us of any query or dispute in respect of any invoice, or any part of an invoice within sixty (60) days of the date of the invoice and we shall negotiate in good faith as soon as reasonably practicable to resolve the dispute. If you do fail to notify us of any dispute within the sixty (60) day period, the full amount of the invoice shall be payable. Payment for all sums not in dispute shall be made on the due date.

10.5 If you fail to pay any amount payable under this Contract, we reserve the right to suspend the Services until all outstanding payments are received in full; and claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. A continuous non-payment will, with warning, lead to the issuing of County Court Proceedings where necessary.

10.6 Subject to Clause 10.7, we shall be entitled to increase the Charges, with effect from the end of the Initial Term and any Extended Term. Any such increase shall be notified to you at least 30 days prior to the date on which the increase will take effect.

10.7 Notwithstanding Clause 10.6, we reserve the right to increase the Charges during the Initial Term or any Renewal Term as a result of any increase in our costs which are imposed on us by any third party in connection with the provision of the Services to you. Any such increase will be subject to 30 days written notice to you.

10.8 Where the Services comprises or includes services in respect of which rebates are payable by us to you ("Rebate Services"), we will notify you of the rebate due for each calendar month or other applicable period within 15 days of the end of each billing period. It is then your responsibility to issue an invoice to us for payment of the rebate due. We will pay the rebate by the later of (i) 45 days following the date of your invoice, and (ii) 14 days of the date of receipt by us of sums from British Telecommunications plc (or other relevant carrier) paid to us in respect of the applicable Service. You shall not attempt to set off any rebates against payment of Charges.

10.9 Following a decision or request from Phone Pay Plus relating to a Rebate Service, we may withhold from any rebate payable to you or demand payment by you of such sums as are sufficient to meet any fines, administrative charges or other sums payable by us to Phone Pay Plus and which Phone Pay Plus claim entitlement under the Phone Pay Plus Code.

10.10 Where a network operator (including, without limitation, BT) withholds payment of any sum (in whole or in part) due to us in relation to a Rebate Service or subsequently claims repayment of any sum (in whole or in part) paid to us in relation to Rebate Service, we may deduct from any rebate payable to you and keep or demand payment by you of a sum equal to the amount delayed, withheld or claimed until such network operator makes payment of the same in full to us.

10.11 Failure to pay, as per payment terms, could result in suspension of services until funds due are paid in full. Affected services may then be resumed.

10.12 Where requested a Standing Order or Direct Debit must be set up to support the payment of the service provided. Should the initial agreement charge per month be less than £5,000.00, including vat, payments must be made via Direct Debit or be subject to an administration charge of £10.00 per month.

10.13 Subject to Clause 7.2, should any installation or Service, wholly or partly, be held up by you for more than 30 working days, we have the right and will be entitled to start charging for the agreed service(s) and/or an Administration fee equal to 15% of the monthly cost as per the Order. This charge is solely at our discretion.

## **11. DIRECTORS' GUARANTEE**

11.1. Each of your Directors (collectively referred to as Directors) irrevocably and unconditionally agrees to guarantee the Charges and Payment of the Agreement and all present and future payment obligations pursuant to the Agreement, as outlined in Clause 10.

11.2. Without prejudice to Clause 11.1 above, each Director as a separate and independent obligation, unconditionally and irrevocably agrees to indemnify us in respect of any losses, costs and expenses suffered or incurred arising out of or in connection with any failure of you to perform its obligations pursuant to the Agreement, as may be varied from time to time, including but not limited to any failure to make due payment in respect of its present and future indebtedness and other liabilities to us, under the Agreement, whether actual or contingent as well as payment of all interest charges and expenses payable.

11.3. The liability of each Director under this Guarantee shall not be released, diminished or affected by any variation of the terms of the Agreement or forbearance neglect or delay in seeking performance of the obligations under the Agreement or of the Directors under this Guarantee or any granting of time for such performance or anything else which, although it could affect the liability of a Director, would not affect the liability of a person who had agreed to pay the debts of another as if they were their own obligations.

11.4. The Directors' obligations of guaranteeing the debts under this Guarantee are joint and several and are continuing obligations. This means that (subject to Clause 11.5 below) those obligations apply in respect of the full amount of any debt at the time we make a demand under this Guarantee even if, at some other time the amount of debt has been less than the amount at the time of demand.

11.4.1 a Director shall not be discharged, nor shall his liability be reduced by any time or any other indulgence or concession given that would discharge or reduce that Director's liability.

11.5 We shall not be obliged to take any action or obtain judgment against the you before taking steps to enforce any of our rights or remedies under this Guarantee.

11.5.1 we can enforce each Director's obligations under this Guarantee.

11.5.2 each Director waives any right it may have to require us to proceed against or enforce any other right or claim for payment against any person before claiming from the Directors under this Guarantee.

11.6 Any demand or notice under this Guarantee shall be in writing signed by an authorised signatory and will be served on each Director. Any demand or notice to each Director shall be deemed to have been delivered immediately upon receipt. Any demand or notice by the Directors under this Guarantee shall become effective as soon as posted and confirmed received by recorded delivery.

11.7 The Directors shall not make any withholding on account of tax from any payment due to us under this Guarantee, unless the Directors are required by law to do so. If the Directors are required by law to do so, the Directors shall increase the amount of the relevant payment so that, after the withholding, we receive the appropriate amount. The Directors shall notify us if these circumstances arise.

11.7.1 this Guarantee is the property of TransWorldCom Limited.

11.8 This Guarantee is governed by the law of the country applicable to the Agreement and the courts of that country shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee).

## **12. INTELLECTUAL PROPERTY**

12.1 You acknowledge and agree that we and/or our suppliers own all intellectual property rights in the Services and any Software provided in connection therewith. Except as expressly stated in this Contract, you are not granted any rights to, or in, patents, copyrights, database rights, trade secrets, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Services.

12.2 You shall not, except as may be permitted by law or otherwise in accordance with this Contract:

12.2.1 copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

12.2.2 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.

12.3 In the event of any judgment by a competent UK court of law that the Services or any Software infringe the intellectual property rights of a third

party, we may (at our option) procure the right for you to continue using the Services or such Software, replace or modify the Services or Software so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract without any additional liability or obligation to pay damages or other additional costs to you.

12.4 This Clause 11 sets out your sole and exclusive remedies, and our entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

12.5 Should an infringement be found and not be resolved, we are liable to seek damages for losses occurred and also issue proceedings in the Trademark Court.

## **13. LIABILITY**

13.1 Nothing in this Clause 13 shall limit or exclude our liability to you for death or personal injury, or fraud or fraudulent misrepresentation, or breach of any warranty implied by Clause 2 of the Supply of Goods and Services Act 1982 or for any other loss or damage which cannot be excluded by law.

13.2 Subject to Clause 13.1, we shall have no liability to you for:

13.2.1 any loss of profits or anticipated profits; loss of anticipated savings; loss of business opportunity or loss of goodwill or wasted management time which you may suffer, whether they arise directly or indirectly or are immediate or consequential and whether they arise in contract, tort (including negligence) or otherwise; or

13.2.2 any indirect or consequential loss or special damage (even though we were aware of the circumstances in which such special damage could arise); or

13.2.3 any loss of or damage to your data, howsoever caused.

13.3 Subject to Clauses 13.1 and 13.2, our total liability to you, whether in contract, tort (including negligence) or otherwise in connection with this Contract, shall not exceed a sum equal to the total value of the Charges and call charges paid or payable by you in respect of the Services during the 12 months prior to which the liability arose.



13.4 We shall not be liable to you in respect of any claim against us which may reasonably be considered likely to give rise to a liability in respect of the Services or otherwise in connection with this Contract unless:

13.4.1 you comply fully with the procedure set out in Clause 19; and

13.4.2 in the event the claim cannot be settled in accordance with Clause 19, you commence any court proceedings on or before the date which is 60 days after the date on which you became aware or ought reasonably to have known about the circumstances giving rise to the claim.

#### 14. CANCELLATION

14.1 You may cancel this Contract or any individual Service at any time upon 90 days written notice to us. Notice will only be accepted if received from 120 days prior to the end of the Initial Term or any extended period, as outlined in Clause 3.1. You acknowledge that 90 days' notice to cancel any Service is a reasonable period in order for us to mitigate any costs, expenses, losses or damages which we may incur as a result of the cancellation of our contracts with third party suppliers involved in the provision of that Service to you.

14.2 Where we receive your notice of cancellation pursuant to Clause 14.1 before the end of the Initial Term or Extended Term (as applicable), you shall pay to us the Cancellation Charge in respect of the Service or Services to which your notice refers. You hereby acknowledge that the Cancellation Charge represents a reasonable pre- estimate of our administration costs, expenses, lost revenue and any other loss which we may suffer as a result of your cancellation of the Services during such period.

14.3 Any cancellation within the term, unless 90 days' notice is served in accordance with clause 3.1, is payable in full, before cancellation of any services or transfer of any numbers, as it would be if the term of the contract was completed. Should the said amount remain unpaid we would instruct solicitors to issue proceedings and apply interest.

14.4 To clarify, the Cancellation Charges are as follows:

- the total of the Charges which would have been payable to the end of the Initial Term or Extended Term as appropriate); plus

- the Committed Spend or (where no Committed Spend is set out in the Order the Average Monthly Call Charges) multiplied by the number of months to the end of the Initial Term or Extended Term as appropriate; plus

- £125.00 for the cancellation of your Broadband Service (where applicable); plus

- £25.25 per 01, 02, 03 or 08 number ported away from our Network (where applicable); plus

- £148.50 per hour for the cancellation of your CHA for all unused hours (where applicable) "CHA" means the Order for a Contract Hours Agreement. "Charges" the charges payable by you pursuant to Clause 10 for the provision of the Services as set out in the Order.

#### 15. SUSPENSION OF SERVICES

15.1 We may suspend the Services at any time upon reasonable notice to you (where practicable):

15.1.1 where we are obliged to comply with any order instruction or request of a competent court, government or regulatory authority; or

15.1.2 where provision of the Services is rendered impossible, or functionality or performance of the Services becomes materially limited, as a result of technical limitations or other matters which are outside our reasonable control, in which case we shall use our reasonable endeavours to restore the Service as soon as reasonably practicable.

15.2 We may suspend the Services at any time in order to carry out:

15.2.1 planned maintenance, which we may carry out to ensure the continuing quality of the Services where:

- a) we have given you at least **48 hours'** notice of our intention to undertake such maintenance, or
- b) where the maintenance work is required in connection with the requirement of a third party, such period of notice as may be reasonable taking into account the notice which we may have received from that third party.

15.2.2 emergency maintenance which we may require to be undertaken to prevent the failure or serious degradation of the Services. Where we are unable to give you at least 12 hours' notice of our intention to undertake emergency maintenance we will endeavor to undertake emergency maintenance outside our normal business hours.

15.3 Notwithstanding Clause 15.1 and Clause 15.2, **we may suspend the Services at any time immediately upon notice to you if you fail to pay any Charges when due in accordance** with Clause 10 or if in our reasonable opinion you fail to meet any of your obligations under Clause 6, in which case the Services will remain suspended until such time as you demonstrate to our reasonable satisfaction that you have remedied your breach. Nothing in this Clause 14.3 shall prevent us from taking action to terminate the Contract in accordance with Clause 16.

15.4 In the event that the Services are suspended pursuant to Clause 15.3, we reserve the right to charge you a reconnection fee which you must pay in full prior to the Services being resumed.

15.5 You will remain responsible for making all payments under this Contract by the due date during any period of suspension pursuant to Clause 15.2 or 15.3.

## 16. TERMINATION

16.1 We may terminate this Contract immediately on notice to you, and without liability to you:

16.1.1 if you fail to pay any amount due under this Contract on the due date for payment and remain in default not less than seven (7) days after being notified by us in writing to make such payment;

16.1.2 if you breach any of the terms of this Contract and the breach (where the breach is capable of being remedied) has not been remedied within thirty (30) days of our written request to remedy it;

16.1.3 if you convene a meeting of your creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) your creditors or if you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of your business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for your winding up or for making of an administration order; or

16.1.4 if the value of your calls falls below the Committed Spend for a period of ninety (90) consecutive days.

16.2 We may terminate this Contract if we cease to be Authorised or if our Authorisation is revoked or modified in any way which has a material impact on our ability to provide any part of the Services or if we are prohibited or restricted from providing any part of the Services.

16.3 On termination of this Contract for any reason:

16.3.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest;

16.3.2 you shall return the Equipment to us and if you fail to do so, we may enter your Premises and take possession of it, and until it has been returned or repossessed, you remain responsible for its safe keeping, any damage caused whilst in your custody will result in further charges.

16.3.3 we shall return your data to you in an appropriate format; and

16.3.4 our respective accrued rights and liabilities as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

16.4 In addition to the provisions of Clause 16.3, if we terminate this Contract in accordance with Clause 16.1 during the Initial Term or any Extended Term, you shall pay to us the applicable Cancellation Charge.

## 17. CONFIDENTIALITY

17.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

17.2 Confidential Information of the disclosing party may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the receiving party procures that any such recipient complies with the provisions of this Clause 17.

17.3 The obligations set out in this Clause 17 shall not apply to Confidential Information which the receiving party can demonstrate:

17.3.1 is or has become publicly known other than through breach of this Clause 17; or

17.3.2 was in possession of the receiving party prior to disclosure by the other party; or

17.3.3 was received by the receiving party from an independent third party who has a full right of disclosure; or

17.3.4 was independently developed by the receiving party; or

17.3.5 is required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement to the extent lawfully possible.

17.3.6 This Clause 17 shall survive termination or expiry of this Agreement, however arising and shall continue thereafter for a period of three (3) years or such other period as may be agreed by the Parties.

## 18. USE OF YOUR INFORMATION

18.1 We may use any information which you supply to us to carry out a search of the files of credit reference agencies. We may also carry out identity and anti-fraud checks with fraud prevention agencies. If you give false or inaccurate information to us and we suspect fraud, we will record this. Details of how you conduct your account may also be disclosed to those agencies. The information may be used by us and other parties in assessing applications for and making decisions about credit, credit related services and insurance from you and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detections and prevention. Information may be used by us and other parties for checking your identity, statistical analysis about credit, insurance, fraud and to manage account and insurance policies. We may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst you retain a financial obligation to us.

18.2 You authorise us to use and disclose, in the UK and abroad, information about you and your use of the Services and how you conduct your account for the purposes of operating the account and providing you with the Services or as required by law to any company within our group of companies from time to time, our suppliers, partners or agents, any telecommunications company, and any person referenced in 18.1 above.

18.3 You can obtain further details about our data processing from the public registration held by the Information Commissioner. If you wish to have details of the credit reference or the fraud prevention agencies from whom we obtain information about you or receive a copy of information we hold about you, please write to our Data Protection Officer at the address set out above. We reserve the right to charge the statutory fee for the provision of such information to you.

18.4 We may also disclose any information about you or your use of the Services in order to assist the investigation of any criminal offence, any offence under the Data Protection Act or any offence or contravention of any legislation to the police, the Information Commissioner, OFCOM and/or any other relevant organisations.

18.5 We may from time to time use information which we hold about your business, specifically for our own marketing purposes. At no time will any details be passed to any third-party company. However, you may at any time write to us to request that we stop using your information for these purposes.

18.6 You acknowledge that we have no obligation to monitor, review or edit any of your information or third- party information which you store on or transmit through our Equipment or use in connection with the Services. However, we reserve the right to intercept, access, retain and disclose copies of such information for the purposes of:

18.6.1 retaining a record of activity on our Equipment or systems and otherwise establishing the existence of facts in connection with the Services;

18.6.2 observing the performance of the Services and correcting, maintaining improving and effective operation of the Services;

18.6.3 complying or ascertaining compliance with regulatory or self-regulatory practices applicable to us or the Services (including without limitation the our Authorisation);

18.6.4 in the interests of national security or for preventing or detecting crime;

18.6.5 for investigating or detecting any unauthorised use of our Equipment or the Services;

18.6.6 complying with any request for information or disclosure from a court or other appropriately authorised body.

## **19. DISPUTES**

19.1 If any dispute arises in connection with this Contract, the directors or other senior representatives of the parties with authority to settle the dispute will, within thirty (30) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

19.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

19.3 No party may commence any court proceedings in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **20. FORCE MAJEURE**

20.1 We shall have no liability to you under the Contract if we are prevented from, or delayed in performing, our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control.

## **21. GENERAL**

21.1 We may vary these terms and conditions of business from time to time upon written notice to you.

21.2 A waiver of any right under the Contract is only effective if it is in writing and shall not be construed as a waiver of any other provision of this Contract.

21.3 If any provision of the Contract (or part of any provision) is found by the court to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

21.4 The Contract constitutes the whole agreement between us and supersedes all previous agreements between us relating to its subject matter. We each acknowledge, in entering into the Contract, we have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in this Contract provided that nothing in this Clause shall limit or exclude any liability for fraud.

21.5 You shall not, without our prior written consent, assign, transfer, subcontract or deal in any manner with any of your rights or obligations under this Contract.

21.6 In the event and to the extent of any conflict between these General Terms and the Order then these General Terms will take precedence.

21.7 We may at any time subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.

21.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.

21.9 Any notice required to be given under the Contract shall be in writing and shall be delivered personally or sent by recorded delivery or by commercial courier to the other party to the address set out in the Order or as otherwise specified by the relevant party by notice in writing to the other party. Any notice shall be deemed to have been duly received if delivered personally, when left at the address set out in the Order or, if sent by recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.10 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, English law and shall be subject to the exclusive jurisdiction of the English courts.

#### **MOBILE & AIRTIME SERVICE ONLY; SPECIFIC TERMS AND CONDITIONS**

In addition to and where necessary to supersede our general terms and conditions, as above:

#### **22. PURPOSE AND ACCEPTANCE**

22.1 Each Order and these terms and conditions set out the terms and conditions of business between us and you in respect of the supply of Products, Services and the introduction to Airtime Service Providers. These terms and conditions shall govern the Agreement to the exclusion of any other terms and conditions subject to which you have accepted or purported to have made an Order.

22.2 Each Order shall be binding on us only after it indicates its acceptance by sending out a welcome letter to you or commences provision of the Service whichever is earlier, prior to acceptance you agree that we may carry out such credit checks as it deems necessary.

22.3 Any recommendations we make resulting in changes to your communications systems will be as a result of consultation with you and based solely upon the information provided to us by you, considering our knowledge of the products and services available in the industry.

22.4 For the avoidance of doubt, we do not provide Airtime Services. If you choose to enter into an Airtime Services Agreement, you must enter into such agreement with the Airtime Services Provider directly. We are not a party to any such arrangement and have no liability to you in connection with any such agreement.

22.5 It is the sole responsibility of you to familiarise yourself with the terms and conditions imposed by any Airtime Services Provider before entering into any Airtime Services Agreement with them.

#### **23. DURATION**

23.1 Each Agreement shall commence on the date specified in the Order (or as otherwise notified to you in writing from us) and shall continue for a minimum period, that being equal to the signed mobile or network carrier agreement.

#### **24. AIRTIME SERVICE AGREEMENTS**

24.1 We have well established links to all the major Airtime Services Providers and are able to introduce you to independently sourced communication solutions.

24.2 As with any competitive business, tariffs for Airtime Services adjust to market conditions. We will use reasonable endeavours to propose the Airtime Services Provider and tariff that satisfies your stated communication objectives, at the time of consultation.

24.3 You are responsible for the administration of the Airtime Services Agreement and for the transfer of mobile telephone numbers to new networks. We will, on request, use reasonable endeavours to assist you with queries relating to the administration of Airtime Services Agreements, but on any contractual issues you must deal with Airtime Services Provider direct. **For the avoidance of doubt, we cannot cancel Airtime Service Agreements on your behalf.**

24.4 Where an Order states that we agree to re-pay any charges incurred by you in transferring to a different Airtime Services Provider, this payment will be made by us not earlier than four months from the date of transfer unless otherwise agreed in the Order. Any such payment will be limited to the actual mobile numbers transferred at the payment dated. You are able to claim from us such payments but shall not be entitled to payment under Clause 24.4 where the Airtime Services Agreement is terminated prior to the date of payment.

24.5 As common industry practice, we will derive income from the Airtime Services Providers in the form of commissions for introducing you to their services.

24.6 If the Order states that a cash incentive inducement or subsidy shall be paid to you by us, where you have entered into an Airtime Services Agreement, any such payment will be made by us to you in one instalment in arrears at the end of month four of the Airtime Services Agreement, unless otherwise stated. These payments are repayable to us in the event that the Airtime Services Agreement has been terminated before the end of the Minimum Period, as per Clause 23.1.

24.7 Where any incentive is offered by the Airtime Services Provider or the manufacturer of a Product, we are not responsible for payment of such sums or satisfaction of any such obligation to you and you hereby acknowledges that it must apply direct to the relevant third party for payment and/or performance.

24.8 Any cash incentives or subsidy's offered under clauses 24.4 and 24.6 that have not been claimed by you within 14 days from the end of the Minimum Period become null and void.

24.9 We can confirm that Airtime Services may be barred or removed for non-usage of individual handsets after a consecutive 90-day dormant period. Only the dormant handsets may be barred, the Airtime Service will not be affected for all other users.

## 25. DIRECTLY SUPPLIED PRODUCTS AND SERVICES

25.1 We shall supply the Products stated in the relevant Order subject to these terms and conditions.

25.2 All Products supplied by us come with a 12-month manufacturer's guarantee ("Product Guarantee"), unless otherwise agreed in writing. The Product Guarantee is only valid if you comply with the terms and conditions of the Product Guarantee.

25.3 We reserve the right to charge you for time and materials used on repairs carried out as a result of improper or incorrect usage of the Product and/or where you have not complied with the terms and conditions of the Product Guarantee.

25.4 Except for Bank Holidays and other public holidays, for the purpose of performing repairs and services in connection with the Product the normal working hours shall be our Service Hours.

25.5 We shall endeavour to supply or install the Products by the date (if any) specified in the Order. However, we do not guarantee that delivery or installation will be affected by such date and does not accept any liability in respect of late delivery or installation for whatever reason.

25.6 We reserve the right to alter specifications or designs at any time. No warranty, statement, or promise of any kind given by us, our employees, agents or contractors shall be binding unless confirmed in writing by us.

## 26. PAYMENT

26.1 Where an Order states that a charge is made for the Product, title to the Product passes to you upon receipt of payment of the charge in full.

26.2 Where an Order states that a Product is supplied free of charge, then title in the Product remains with us and on termination of the Associated Airtime Service Agreement (for whatever reason) you must return the Product to us (which shall include without limitation SIM card, battery, charger, user guide, and any other materials that you received with the Product, together with any accessories supplied by us). If you do not return the Product to us, then you must pay for the goods in full. For the avoidance of doubt each product that is supplied to you is priced at the original purchase value.

26.3 Notwithstanding that ownership may not have passed to you, risk in the Product shall pass to you on delivery.

26.4 Unless otherwise stated, prices are quoted exclusive of VAT which will be charged in addition.

26.5 All invoices raised by us are to be paid by you within 14 days of the date of invoice. If you fail to make payment on the due date, we reserve the right to charge (both before and after judgement) daily interest on late payments at a rate equal to 4% per annum above the base lending rate of Barclays Bank Plc until the date that payment is made.

26.6 We reserve the right to amend rates and charges from time to time. The prices applicable shall be as stated in the relevant Order.

## **27. WARRANTY AND LIABILITY**

27.1 Subject as expressly provided in these Mobile & Airtime Service Specific terms and conditions and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

27.2 Where the Goods and/or Services are sold or supplied under a consumer transaction (as defined by the Consumer Transaction (Restrictions on Statements) Order 1976) your statutory rights are not affected by these terms and conditions.

27.3 A claim by you which is based on any defect in the quality or conditions of the Goods and/or Services or their failure to correspond with the description stated in the Order shall (whether or not delivery is refused by you) be notified to us within 48 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Goods and/or Services and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Agreement.

27.4 Where a valid claim in respect of any of the Goods and/or Services which is based on a defect in the quality or condition of the Goods and/or Services or their failure to meet specification is notified to the us in accordance with these terms and conditions, we may replace the Goods (or the part in question) or re-perform the Services (in whole or in part) free of charge, or our sole discretion, refund to you the price of the Goods and/or the Services (or a proportionate part of the price), in which case we shall have no further liability to you.

27.5 Except in respect of death or personal injury caused by our negligence, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of us, our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Agreement or at all) or their use or resale by you and the entire liability of us under or in connection with the Agreement shall not exceed the price of the Goods and/or Services except as expressly provided in these terms and conditions.

27.6 We shall not be liable to you or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond our reasonable control.

## **28. TERMINATION**

28.1 Either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other commits any material breach of these terms and conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

## **29. GENERAL**

29.1 These terms and conditions (together with the general terms set out in the Order) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing, or previously agreed in writing, between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

29.2 A notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice.

29.3 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

29.4 If any provision of these terms and conditions is held by any court or other competent authority or be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

29.5 You may only assign the benefit of an Agreement and any rights it may have under it either wholly or partly with our prior written consent, such consent will not unreasonably be withheld. We may sub-contract and assign the benefit and all rights and obligations under an Agreement to a third party by obtaining your prior written consent, which will not be unreasonably withheld.

29.6 These terms and conditions shall be governed by and construed in accordance with the Laws of England and both parties hereby submit to the exclusive jurisdiction of the English Courts.



## GDPR CLAUSE

In accordance with the regulations set out the company will endeavor to:

- only act on the written instructions of the designated data controller;
- ensure that people processing the data are subject to a duty of confidence;
- take appropriate measures to ensure the security of processing;
- only engage sub-processors with the prior consent of the controller and under a written contract;
- assist the controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;
- assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- delete or return all personal data to the controller as requested at the end of the contract; and
- submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.
- A processor must only act on the documented instructions of a controller. If

a processor determines the purpose and means of processing (rather than acting only on the instructions of the controller) then it will be considered to be a controller and will have the same liability as a controller.

- In addition to its contractual obligations to the controller, under the GDPR a processor also has the following direct responsibilities:
- not to use a sub-processor without the prior written authorisation of the data controller;
- to co-operate with supervisory authorities (such as the ICO);
- to ensure the security of its processing;
- to keep records of processing activities;
- to notify any personal data breaches to the data controller;
- to employ a data protection officer; and
- to appoint (in writing) a representative within the European Union if needed.

If a processor (us) fails to meet any of these obligations or acts outside or against the instructions of the controller, then it may be liable to pay damages in legal proceedings or be subject to fines or other penalties or corrective measures.

If a processor uses a sub-processor then it will, as the original processor, remain directly liable to the controller for the performance of the sub-processor's obligations.

## **IT SUPPORT SERVICES - CUSTOMER OBLIGATIONS: CONTRACTED HOURS AND MANAGED SUPPORT AGREEMENT**

### **Notice of Environment Changes:**

You agree to notify us at least five business days prior to change management activities affecting either your IT infrastructure or specifically Entitled Devices (whereupon “*Entitled Devices*” means those devices agreed to be supported under this agreement), including those activities listed below. Change management activities include any enhancement, modification, update, installation or deinstallation that will impact the existing production environment for one or more Entitled Devices, including, but not limited to, networks, data centre operations, support or facilities environment.

### **Activity / Tasks that involve the loss of monitoring services and/or trigger alerts:**

- Stopping/disabling monitoring Services for one or more Entitled Device(s).
- Server shutdowns/reboots.
- Decommissioning/replacement of Entitled Devices including activities related to the replacement, refresh, reconfiguration or decommissioning of hardware.
- Disabling switch ports as well as physical cable disconnections (i.e. moving equipment).
- Disabling network cards.
- Disconnecting network cables.
- Service account changes (Credentials, naming). Changes such as renaming, deleting, privileges change and mainly password reset on accounts used in connection with Entitled Devices.
- Outages/maintenance of the environment containing Entitled Devices (including emergency changes).
- Installation/uninstallation/upgrades of system software introduced into environment containing Entitled Devices (servers, routers, firewalls, etc.)

By providing us with advance notice of any change management activities, we will suppress alerts from being generated for the Entitled Devices affected by the change management activities during the maintenance window selected by you and advise on best practice to make any changes. If you do not follow this procedure, it may place your environment at risk and may incur charges if we are requested to bring the environment back to a stable ready state.

### **Hardware Support:**

In addition to the maintenance of the operating system and software, you agree to provide valid hardware support warranties for all equipment that is covered under the Agreement. You also agree to cover costs for hardware repairs and/or replacement for all equipment not under a valid hardware support warranty.

### **Technical Requirements:**

#### **1. IT Environment**

- Professionally installed network cabling (Category 5e or higher)
- If deemed necessary by us, Active Directory with all systems in the environment added to the domain
- Provide us with a list of all subnets that devices are on
- Minimum 2mbps persistent broadband connection
- Current network diagram
- All devices labeled and identified on network diagram

#### **2. Firewall - Hardware**

- Current business class firewall (SonicWall, Cisco, Fortinet, Draytek)

#### **3. Firewall – Software**

- Intrusion detection, Anti-Virus and Anti-Malware subscription
- Anti-Virus must be installed on all computers
- OS patch updates must be current

**Supported Products:**

Select devices from the following hardware manufactures (but not limited to):

- |            |           |            |
|------------|-----------|------------|
| • Dell     | • D-Link® | • Lexmark® |
| • 3COM®    | • Epson®  | • Linksys® |
| • Acer®    | • HP®     | • Netgear® |
| • Brother® | • IBM®    | • Draytek® |
| • Canon®   | • Apple   | • Sony®    |
| • Cisco®   | • Lenovo  | • Toshiba® |

Not all devices provided by the hardware vendors listed above are supported. For minimum technical requirements and a complete list of available Services and supported products please contact us.

**Supported technologies include but are not limited to the following:**

- Microsoft® Windows® desktop operating systems currently supported up to the extended support end date.
- Microsoft Windows server operating systems currently supported up to the extended support end date.
- Desktop applications including: Adobe® Acrobat®, Adobe Photoshop, AVG Virus Scan®, Microsoft Excel®, Microsoft Outlook®, Microsoft PowerPoint, Microsoft Word, Internet Explorer®, Mozilla Firefox.
- Microsoft Windows server applications including: Exchange Server, SQL Server® and Active Directory®
- Apple® Mac OS devices and Server technologies.

Lines of Business applications are evaluated on a case by case basis. LOB's must include active support subscriptions from the developer.

**UNLESS CONFIRMED ON THE ORDER AGREEMENT, NEITHER THE CONTRACTED HOURS OR MANAGED SUPPORT AGREEMENT INCLUDE MICROSOFT BACK OFFICE SUPPORT OR SUPPORT OF COMPANY MICROSOFT TENANTS THEREIN – THESE WOULD BE PART OF A SEPARATE MICROSOFT MSA OR CHA SUPPORT AGREEMENT.**