

KEYPOINT COMMUNICATIONS - Terms & Conditions

1. DEFINITIONS

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

'Additional Charges' means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 6.3.3;

'Additional Services' means those additional services listed in the Order Form as being applicable to or clearly excluded from the Network Services;

'Annual Support Charge' means the support charge for the Maintenance Services;

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

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

'Charges' means the charges payable by the Customer for Services as set out in the relevant Price List;

'Company' means Keypoint Communications which is a trading name of Jomble Limited a company registered in England and Wales Registered No 06587333 whose registered office is Orchard House, Provender Lane, Norton, Kent, ME13 0SL ("the Company") and the expression "Company" includes the Company's permitted assigns employees and agents;

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

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

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

'Customer' means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that person's firm's or company's authority and includes where relevant the Customer's permitted assigns employees and agents, and where the context permits or requires shall also include (without limitation) the End User;

'Delivery' means the point that the Equipment arrives at the Customer's premises before (where applicable) the unloading of Equipment from the delivery vehicle and 'Delivered' shall be construed accordingly;

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

'End User' means the person or persons for whose benefit the Equipment is ultimately provided;

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

'Installation' means the physical installation of Equipment at the Customer's premises;

'Installation Services' means services relating to the supply and installation of Equipment (where applicable)

'Minimum Period' means the minimum contract period applying to each of the Services commencing on the Commencement Date or the Connection Date with regard to Network Services (as the case may be) and expiring on the date at the end of the period set out in the Order Form or the Service Specific Conditions (where applicable).

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

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

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

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

'Price List' means the Company's price list for each of the Services which may be varied from time to time;

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

'Service Specific Conditions' means any additional terms and conditions which are to apply to the Contract as specified in the Order Form in respect of specific Services; and

'User Instructions' has the meaning given to it in condition 6.5(ii).

2. CONTRACT FORMATION

2.1 The details recorded on the Order Form, together with these Conditions and any other Service Specific Conditions referred to in the Order Form as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties except that such Contract shall not become binding on the parties until written notice of the Company's acceptance of such order signed by an authorised representative of the Company has been delivered to the Customer (and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of the Company (in its sole discretion), the Customer entering into a finance agreement (where applicable) and in respect of Network Services the conditions set out in condition 5.2.1 being met).

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

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

2.4 Any illustrations, samples or descriptive material, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred.

2.5 For the avoidance of doubt, tenders and quotations may be withdrawn or varied by the Company at any time before acceptance by the Company has taken place in accordance with condition 2.1, and unless otherwise specified shall be deemed to be withdrawn automatically twenty eight (28) days from their date of issue.

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

2.7 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.7 be deemed a separate contract (whether or not included on the same Order Form) to the extent that any delay or failure to supply Equipment and/or Services shall not entitle the Customer to terminate the Contract (to the extent that any such entitlement exists) for other Equipment and/or Services or any other contract entered into under these Conditions.

3. CUSTOMER'S ORDER AND SPECIFICATIONS

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

3.2 Without limitation to the generality of condition 3.1, the Customer shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications,

descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or the supply of any Services (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall indemnify and hold the Company harmless in respect of any liability, loss, injury, damage, demand, claim, cost charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto.

4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES

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

4.1 DELIVERY

4.1.1 In consideration of payment of the Price pursuant to condition 9.1 The Company shall take reasonable steps to deliver the Equipment and where applicable supply the Installation Services within any estimated period for delivery, such period shall (unless otherwise specified) commence from the date of receipt by the Company of all instructions and information for the execution of the Contract, including when applicable the arrangement of credit facilities, but such time is not guaranteed nor deemed to be of the essence of the Contract.

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

4.1.3 If the Customer fails to take delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the delivery of any Equipment in accordance with the Contract is delayed for more than twenty-eight (28) days after the Company has given notice in writing to the Customer that the Equipment is ready for delivery the Equipment shall be deemed to have been Delivered in accordance with the Contract and thereafter the Equipment shall be deemed to be at the risk of the Customer. The Customer shall pay to the Company the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight (28) days.

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

4.1.5 If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.3 then payment shall be made by the Customer to the Company of the balance of the Price within seven (7) days of such deemed delivery date.

4.2 CONNECTION

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

4.2.2 The Customer shall ensure that a suitable earthed mains electricity supply of 240v to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available within 3 metres of the Central Processing Unit (where it is supplied as part of the Equipment).

4.3 PROPERTY AND RISK

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

4.3.2 Notwithstanding Delivery and the passing of risk, the property in the Equipment supplied under the Contract shall not pass to the Customer until the Company has received in cash or cleared funds payment in full for the Equipment and Installation Services (where applicable) and all other equipment and/or services agreed to be sold by the Company to the Customer for which payment is then due.

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

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

4.3.5 The Customer shall not, without the consent of the Company, be entitled to pledge or in any way charge by way of security for any indebtedness any Equipment which remains the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

4.4 LIABILITY FOR REPLACEMENT OR REPAIR

4.4.1 Subject to the following sub-clauses of this condition 4.4, the Company shall, for a period of twelve (12) months from the date of Delivery or Installation (where applicable) whichever is the later event, at its option and without cost to the Customer either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacture or installation (where the Company supplies Installation Services under the Contract) provided that the Company shall have no liability for any such defects unless the Customer notifies the Company, within three (3) Business Days from Delivery or Installation (where applicable) whichever is the later event, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty-four (24) hours of any latent defect arising within such twelve (12) month period.

4.4.2 Where the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for repair, replacement, renewal shall be transferred to the relevant third party maintenance provider on Delivery, subject only to the Company's liability in respect of defects arising on or before Delivery of the Equipment provided that the Customer notifies the Company within three (3) Business Days of delivery in accordance with condition 4.4.1.

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

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

4.4.5 Any repaired or new parts will be delivered by the Company to the Customer free of charge. Any Equipment which has been returned to the Company and replaced by the Company shall become the property of the Company.

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

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

4.5 TRADEMARKS AND BRANDING

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

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

5. NETWORK SERVICES

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

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

5.1.1 The Network Services will commence on the Connection Date and continue for the Minimum Period.

5.1.2 Either party may terminate the provision of Network Services from the date after the Minimum Period has come to an end by giving no less than thirty (30) days notice in writing to the other party.

5.2 SUPPLY OF SERVICES

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

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

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

5.2.2 The Company undertakes to use all reasonable Endeavour's to supply the Network Services to the Customer and to provide the Network Services with due skill and care as and from the Connection Date subject to these Conditions.

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

5.3 SUPPLY OF TELEPHONE NUMBERS

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

5.4 USE OF THE NETWORK SERVICES

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

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

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

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

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

(e) not to use the Network Service to communicate any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character;

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

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

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

(i) to implement adequate control and security over the Network Services provided to the Customer including but not limited to any calls generated by rogue diallers or hackers.

5.4.2 Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Network Service (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer for which condition 4 applies) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition 5.4.2 only such equipment shall be deemed Equipment under those conditions. The Customer agrees to indemnify the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment.

5.5 TRANSFER FROM THIRD PARTY SUPPLIERS

5.5.1 Where the transfer of lines and services from third party suppliers is selected by the Customer then the provision of any and all existing services supplied to the Customer by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Price List, unless specifically excluded by the Customer on the Order Form under the heading for Additional Services. All requests for removing/providing Additional Services must be set out in the Order Form and are subject to lead times advised by such third party supplier.

5.5.2 The Customer hereby acknowledges and accepts that it is the Customer and not the Company who is liable for any charges made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Customer signing such Order Form that the Company will pay for specified charges.

5.6 SUSPENSION AND/OR TERMINATION OF NETWORK SERVICES

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

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

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

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

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

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

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

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

6. MAINTENANCE SERVICES

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

6.1 DURATION OF SERVICES

6.1.1 Subject to the payment of the Annual Support Charge by the Customer, the Company shall supply to the Customer the Maintenance Services from the Commencement Date for no less than 3 years or the period of the hire agreement, whichever is greater (unless earlier terminated in accordance with condition 13 or condition 6.4) and the Contract shall continue thereafter from

year to year (each year starting on the anniversary of the Commencement Date) until terminated by notice in writing by either party to the other, such notice to be no less than ninety (90) days prior to the next anniversary of the Commencement Date.

6.2 PROVISION OF SERVICES

6.2.1 The Maintenance Services shall apply only in respect of Equipment as set out in the Order Form and any other equipment which it is agreed between the parties separately in writing shall be included under the Contract for Maintenance Services, which for the purposes of this condition 6 shall be deemed Equipment.

6.2.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will, within two (2) Business Days, on receipt of notification from the Customer of a request for the provisions of Maintenance Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship of the Company and/or materials which in the opinion of the Company are necessary for the proper functioning of the Equipment.

6.2.3 Where the Company replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.

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

6.2.5 The Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required keeping the Equipment in satisfactory operation. All replaced parts shall become the property of The Company.

6.2.6 Subject to condition 6.3.1, Maintenance Services shall not include the following ("the Excepted Services"):

- (i) the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use including failure to observe any instructions supplied by the Company regarding the operation of the Equipment;
- (ii) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of condition 6.5;
- (iii) the alteration, modification or maintenance of the Equipment by any other party other than the Company without the Company's prior written consent;
- (iv) the transportation or relocation of the Equipment save where the same has been performed by or under direction of the Company;
- (v) the maintenance or repair of any extension wiring after the initial twelve (12) month warranty period under condition 4.4.1 has passed, any Equipment not at the site or of anything other than the Equipment;
- (vi) any defect or error in any software used upon or in association with the Equipment;
- (vii) the supply of replacement cassettes, aerials, aerial systems and batteries;
- (viii) reprogramming of the Equipment to provide improved or modified service or facilities;
- (ix) Equipment faults caused by telephone area code changes or changes in Carriers.

6.3 ADDITIONAL CHARGES

6.3.1 The Company may upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 6.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 6.3.3 below if:

6.3.2 Without prejudice to condition 6.3.1 above the Company shall be entitled to levy Additional Charges in the manner described in condition 6.3.3 below if:

- (a) Maintenance Services are provided in circumstances where any reasonably skilled and competent person would have judged the Customer's request to have been unnecessary; and/or
- (b) the Customer reports an apparent fault of the Equipment to the Company and upon investigation by the Company the Equipment and/or its installation is found not to be defective (in respect of a charge for the investigation and/or for any call-out including, without limitation, Equipment changed in a postal exchange where the Company reserves the right to make a charge up to the replacement value of the item in question); and/or
- (c) where a fault that has been reported to the Company has been a non-Equipment fault but instead one of the Carrier (in respect of a charge for the call-out in accordance with the Company's then current Price List).

6.3.3 Additional Charges shall be levied by the Company as follows:

- (a) upon completion of the work in respect of additional services supplied under condition 6.3.1 and 6.3.2(a); and
- (b) following completion of the investigation and/or call out in respect of condition 6.3.2(b) and (c);

and such Additional Charges (calculated in accordance with the Price List prevailing at the time) shall be payable by the Customer within thirty (30) days of receipt of an invoice.

6.3.4 In respect of a fault which is a failure by the Carrier as referred to in condition 6.3.2 (c) the Company will provide to the Customer a Carrier fault reference that may be used by the Customer to recharge the cost the Company has charged on to the Carrier, however this does not constitute any acceptance of liability for such costs by the Company and for the avoidance of doubt the Company is not liable to the Customer where the Carrier refuses to cover such costs (or any of them).

6.4 DISCONTINUED SERVICES

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

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

6.5 The Customer undertakes that:

- (i) it will use all reasonable endeavours to ensure that the Equipment is used in a normal and proper manner;
- (ii) it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("User Instructions");
- (iii) it will carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
- (iv) it will not permit alteration to call routing apparatus or extension wiring except by the Company, or by the Company's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either (a) the Company so agrees in writing, or (b) the Company fails to carry out the connection itself within twenty-eight (28) days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
- (v) it will appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with the Company;
- (vi) it will not employ a third party to make any alterations to the programming or physical structure of the Equipment;
- (vii) it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;
- (viii) if the Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at

that time, and such payment shall be in addition to the Support Charge.

6.6 CHANGE OF LOCATION

6.6.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of the Company, (such consent not to be unreasonably withheld). Where the Company consents to such relocation, the Company shall provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with the Company's then current Charges applying at that time, and such payment shall be in addition to the Annual Support Charge.

7. FINANCE AND CREDIT

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

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

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

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

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

7.6 After Delivery and Installation (where applicable) is completed any failure by the Customer to complete the finance agreement documentation and commence payment in accordance with the terms of the finance agreement shall render the Customer liable to pay to the Company the whole of the Price (plus VAT) as defined in condition 8.1.2 within seven (7) days of presentation of an invoice.

8. PRICE

8.1 EQUIPMENT

8.1.1 Cash sales: The Price is as stated on the signed acknowledgement of order sent by the Company to the Customer and is exclusive of Value Added Tax or any other tax or duty payable. The amount of such taxes or duties shall be added to the Price and shall be payable by The Customer in the same manner as the Price.

8.1.2 Finance Plans: Where the Equipment is supplied under the terms of a finance agreement the Price is the total of the deposit plus all the periodic instalments as defined in the finance agreement.

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

8.2 NETWORK SERVICES

8.2.1 The Charges will be as detailed in the Price List.

8.2.2 The Company shall have the right to alter the Charges in the Price List from time to time by giving the Customer not less than 28 days' notice.

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

8.3 MAINTENANCE SERVICES

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

8.3.2 The Company may from time to time adjust the Annual Support Charge by advance notification in writing. Such adjustments shall not be made more than once in every 12 month period.

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

9. PAYMENT

9.1 EQUIPMENT

9.1.1 Cash Sales: A deposit equal to one half of the Price (Plus VAT) is required at the time of the placing of the order. The balance of the Price (Plus VAT) as defined in condition 8.1.1 is payable immediately upon completion of Delivery.

9.1.2 Finance Plans: Where payment is arranged through a finance provider payment shall be in accordance with the terms of the finance agreement.

9.2 NETWORK SERVICES

9.2.1 The Customer shall be invoiced monthly by the Company and agrees to pay the Charges within 14 days of receipt of the invoice.

9.3 MAINTENANCE SERVICES

9.3.1 Unless otherwise agreed, the Customer will pay the Annual Support Charge to the Company monthly by Direct Debit in advance of the relevant period.

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

9.4 If payment of any sum payable to the Company is not made on or before the due date The Company shall be entitled to charge interest thereon on such sum at the rate of 4% per annum above the current base rate of HSBK Bank such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month.

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

10 ACCESS TO PREMISES AND PROVISION OF INFORMATION

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

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

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

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

10.3 The Customer warrants that it has adequate health and safety provisions in place at its premises and shall indemnify and hold harmless the Company against any claims, costs, expenses (including, but not limited to, legal expenses) arising against the Company in respect of any injury to property or person sustained by the Company's employees, agents or sub-contractors whilst attending the Customer's premises.

11. WARRANTIES AND LIMITATION OF LIABILITY

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

11.2 Subject to condition 11.6, in no circumstances shall the Company's liability to the Customer in respect of one incident or series of connected incidents in any one year, exceed the Price paid for Equipment and Installation Services and/or the Charges payable for Services (as the case may be) payable for the relevant Equipment and Installation Services and/or the Charges for Services to which the claim or claims relate.

11.3 Subject to condition 11.6, with regard to defective Equipment, liability shall attach to the

Company only if the relevant Equipment and Installation Services (where applicable) have been paid for in full. Failure of the Customer to carry out any of the Customer's obligations shall relieve the Company of any liability.

11.4 Under no circumstances shall the Company be liable in any event for consequential loss, special damages, loss of profits (direct or indirect) or other indirect loss, however arising, whether or not the Company knew or ought to have known that such losses or damages might be incurred including without limitation loss of income, interest or loss of markets.

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

11.6 Nothing in these Conditions shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or its employees while acting in the course of their employment with that party or in respect of its fraudulent misrepresentation.

12. CUSTOMER'S INDEMNITY

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

12.2 Without prejudice to conditions 12.1, in the event of any third party making a claim against the Company arising out of the subject matter of the Contract, whether arising out of any negligence, breach of duty or other wrongful act or omission by the Company, its servants or agents, or otherwise, in respect of any loss or damage outside or beyond the liability of the Company to the Customer as limited herein, then the Customer shall indemnify the Company against any such claim (and all costs incurred therein) in respect of which the Company is by these terms declared to be under no liability to the Customer, or insofar as any such claim shall cause the total liability of the Company to the Customer and all such claimants to exceed the limited sum set out in condition 11.

13 TERMINATION AND CONSEQUENCES

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

(a) at all in respect of Equipment; or

(b) except for termination in accordance with the conditions relating to the serving of notice to terminate specific to the relevant Services (which for the avoidance of doubt means a date no earlier than the day after the last day of the Minimum Period) unless otherwise agreed in writing with the Company PROVIDED THAT such agreement shall be on terms that the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer cancelling the contract before the end of the Minimum Period or where the contract has continued beyond the Minimum Period before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding line rental charges that would have been paid by the Customer had the contract continued for the Minimum Period and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Network Services transferred from third parties) and expenses incurred by the Company as a result of such changes or cancellation.

13.2 Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than three (3) months written notice in writing to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 13.2, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Period applicable in respect of that Contract.

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

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

14 GENERAL

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

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

14.3 Unless otherwise stated within any Service Specific Conditions, the Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

14.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent to the attention of the person, and to the address or fax number, given in the Order Form (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed received in respect of condition 14.4 is not within Normal Working Hours at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

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

14.6 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.7 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.8 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.9 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six (6) months after the termination of the Contract (or in the case of multiple Contracts the last Contract to be terminated), solicit or engage away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services. Any consent given by the Company in accordance with this condition 14.9 shall be subject to the Customer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

14.10 Without prejudice to condition 7.1, the Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the Services.

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

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