

DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

1.1 "Equipment" means the equipment described in Schedule C. For the avoidance of doubt this includes (i) all hardware on which the Systems are or will be installed and may include routers, servers, switches, telephones and related cabling and (ii) any hardware provided by the Licensor pursuant to clause 6.4;

1.2 "Incident" means a failure of the Systems, Equipment or Services to operate in accordance with their published specification;

1.3 "Incident Report" means a notification of an Incident which is raised to the Licensor by the Licensee;

1.4 "Intellectual Property Rights" means all vested, contingent and future intellectual property rights including but not limited to copyright, trademarks, design rights, trade names, patents, know-how, trade secrets, database rights or any similar right exercisable in any part of the world including any application for the registration of any patents or registered designs or similar registrable rights in any part of the world;

1.5 "Licence" means the licence granted by the Licensor in accordance with clause 2 inclusive of the agreements undertaken herein by both parties hereto;

1.6 "Licensee Provided Equipment" means any equipment at the Site provided and used by the Licensee in order to use the Services or Systems;

1.7 "Program Documentation" means the user instructions, operating manuals and all relevant documentation supplied by the Licensor to enable the proper operation and functionality of the Systems and Equipment;

1.8 "Service Fee" means the fees for the provision of the Services as specified in Schedule E;

1.9 "Service Provider" means any third party from whom the Licensor procures services in order to provide the Services under this Agreement;

1.10 "SLA" means Service Level Agreement as set out in Schedule D;

1.11 "Services" means any services provided by the Licensor under this Agreement and can include but is not limited to support, telephony provision and internet provision as set out in Schedule C;

1.12 "Site" means the premises specified by the Licensee where the Licensor is to install and/or deliver the Systems and the Equipment as set out in Schedule C;

1.13 "Start Date" means the date from which Services will be provided as specified in Schedule C or agreed in writing by both parties at a later date;

1.14 "Systems" means any software installed on the Equipment to allow the Licensor to provide the Services;

1.15 "Working Days" means Monday to Friday, 8.30-17.30 excluding bank and public holidays in the United Kingdom;

1.16 Reference herein to Clauses and Schedules are to Clauses and Schedules of the Agreement

1.17 References to the singular include the plural and vice versa, and references to one gender include the other gender.

1.18 Any phrase introduced by the expressions "includes", "including" or "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.19 Any reference to a statute, statutory provision or subordinate legislation (together "legislation") shall (except where the context otherwise requires) (i) be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation and (ii) shall be construed as referring

1.20 Unless specifically provided to the contrary all notices under this Agreement shall be in writing.

1.21 Reference to times are to London times.

1.22 Any references to an "hour" means an hour in a day and any reference to a "day" means a period of 24 hours running from midnight to midnight.

1.23 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2 GRANT OF LICENCE

2.1 The Licensor grants to the Licensee a non-exclusive licence to use the Systems for the purpose of broadband and telephony provision to the Licensee's users for which it is intended at the Site and on the express terms of this Licence and not further or otherwise.

2.2 Title to the Systems shall remain with the Licensor and not pass to the Licensee.

3 PAYMENT AND FEES

3.1 The Service Fee and all other fees shall be paid by the Licensee in accordance with Schedule E to this Agreement. The Service Fee and all other fees are exclusive of any applicable VAT and other sales tax.

3.2 All fees payable hereunder by the Licensee shall be payable to Licensor in British Pounds Sterling in immediately available funds no later than 30 day after the date of the Licensor's invoice.

3.3 Where any Start Date is delayed at the Licensee's request or by virtue of the Licensee's act, neglect or failure to fulfil its obligations hereunder, the Service Fee for that Service shall be payable no later than the Start Date referred to in this Agreement unless otherwise agreed in writing by both parties.

3.4 Where any Start Date is delayed at the Licensor's request or by virtue of the Licensor's act, neglect or failure to fulfil its obligations hereunder, the Service Fee for that Service shall be payable from the date that such Service was installed unless otherwise agreed in writing by both parties.

3.5 The Licensor shall have the right to charge interest on overdue invoices at a rate of 4% per annum above the base rate of Barclays Bank plc in force from the date when payment becomes due from day to day until the date of payment.

3.6 All sums due to the Licensor under this Agreement shall be payable by the Licensee in full (without any set-off, deductions or withholding whatsoever) by Bank Transfer.

3.7 The Licensor reserves the right at any time to require the Licensee to pay a deposit, or issue an irrevocable letter of credit or other form of security acceptable to the Licensor if the Licensee's financial circumstances or payment history is or becomes unacceptable to the Licensor.

3.8 The Licensor shall have the right to remove the Systems from the Equipment or take other steps to disable its use or execute any remote software configuration changes to the Systems (including to terminate any part of the working operation of the Systems) should the Service Fee or any further fees or invoices related to the supply or maintenance of the Systems, Services or Equipment remain unpaid for a period of more than 30 days from the date when payment becomes due.

3.9 Any additional costs or expenses for additional services which are not covered by the terms of the Agreement will be charged at the Licensor's then current rates, including travel and accommodation expenses where relevant.

3.10 The Licensor may after the base period detailed in Schedule C of this Agreement and on each annual anniversary thereafter, on giving at least 30 days written notice to the Licensee, increase the Service Fee or any other further fees referred to in this Agreement by the relevant change in RPI to be capped at 3% per annum. This increase will be for the existing System but new versions of the System may be chargeable at a higher rate.

4 DELIVERY

To the extent that any part of the Systems or the Equipment has not been delivered at the date of this Agreement, the Licensor shall install and/or deliver the Systems and the Equipment at the Site (or other address as may be agreed in writing by both parties) at the date set out in Schedule C (or such later date as may be agreed by the Licensee).

5 TERM

5.1 The Agreement shall commence on the Start Date and shall continue for the period/term set out in Schedule C ("Base Period") and shall continue indefinitely thereafter until terminated in accordance with the provisions hereof.

5.2 Any additional Equipment or Services supplied during the Base Period or any subsequent period may be subject to a different term as agreed in writing by both parties at the time or order. Such Services may have a minimum period as described in Schedule C.

6 SUPPORT AND MAINTENANCE SERVICES

6.1 The Licensor will provide advice by telephone, letter or e-mail on the use of the Systems to the Licensee or any client, agent or appointed representative of the Licensee working to a timescale in accordance with the SLA.

6.2 The Licensor will use its reasonable endeavours to provide the Services, Systems and Equipment by the Start Date and in accordance with the service levels set out in this Agreement but all dates are estimates and except as set out in any service guarantee provisions, the Licensor has no liability for failure to meet any date.

6.3 The Licensor will provide Systems maintenance, which will be limited to the correction of errors in the Systems, procedural documents and other basic information, supplied with the Systems, working to a timescale in accordance with the SLA.

6.4 The Licensor will replace any Equipment deemed necessary for the Systems to function in correct working order by the Licensor working to a timescale in accordance with the SLA. Such replacement will subject to clause 6.6 be made without further charge, however further charges may be levied if the Equipment was not provided by the Licensor. The Licensor guarantees to keep available replacement Equipment to an appropriate specification and standard to keep the Systems in correct working order.

6.5 Errors discovered by the Licensee must be reported by a designated representative of the Licensee either by telephone or email to the helpdesk of the Licensor and must include all required supplemental documentation.

6.6 For the avoidance of all doubt System maintenance services shall not include the diagnosis and rectification of any fault arising from:

- 6.6.1 The improper use, operation or neglect of either the Systems or the Equipment;
- 6.6.2 The modification of the Systems or its merger (in whole or in part) with any other software unless otherwise agreed by the Licensor in writing
- 6.6.3 The use of the Systems on equipment other than the Equipment;
- 6.6.4 The failure by the Licensee to implement recommendations in respect of the solutions previously advised by the Licensor;
- 6.6.5 Any repair, adjustment, alteration or modification of the Systems or Equipment by any person other than the Licensor without the Licensor's prior written consent;
- 6.6.6 Any breach by the Licensee of its obligations under the Agreement;
- 6.6.7 The Licensee's failure to install and use on the Equipment in substitution for the previous release any new release of the Systems within 90 days of receipt of the same;
- 6.6.8 The use of the Systems or Equipment for a purpose for which it was not designed;
- 6.6.9 Damage caused by an Act of God, failures of electrical power, power surges, computer viruses or other reasons beyond the Licensor's control;
- 6.6.10 Cabling, wiring or any other Licensee Provided Equipment;
- 6.6.11 Any device on the Licensee's LAN infrastructure not supplied by the Licensor;
- 6.6.12 A failure attributable to the use of public telecommunications links;

6.7 Where it is found that support is required as a result of circumstances outlined in Clause 6.6, the Licensor will charge for any such work at the prevailing rates.

6.8 The Licensor may on the request of the Licensee provide support notwithstanding that the fault results from any circumstances described in clause 6.5 or 6.6 above or that the support requested is not covered by the terms of this Agreement. The Licensor shall in such circumstances be entitled to charge for such service at the Licensor's rates from time to time for work undertaken on a time and materials basis or fixed quote at the discretion of the Licensor.

6.9 Without prejudice to clauses 6.5 and 6.6 above, the Licensor shall be entitled to levy reasonable charges if support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been unnecessary.

6.10 The Licensor reserves the right to terminate software support for the Systems on 12 months' written notice. In the event that Systems support is terminated for one or more of The Licensor's systems products covered by this Agreement, this Agreement will automatically terminate as to such systems products and a pro rata proportion of any prepaid charges will be refunded subject to deduction of any amounts owing to the Licensor.

6.11 Where it is felt appropriate by the Licensor and where pre-approved by the Licensee, the Licensor will make reasonable endeavours to contact third party companies contracted to the Licensee to keep the Systems in full working order. This may include broadband or telephony companies, third party hardware manufacturers or software companies. The Licensee will either provide appropriate contact information for such companies to the Licensor or communicate directly with such companies following the advice of the Licensor.

6.12 At times the Systems may fail to deliver essential services as a result of problems caused by third party companies as detailed in clause 6.10 above. In this case, the Licensor will not be held responsible for any failure to meet the fix times specified in the SLA when a fix is dependent on actions taken by such third parties. In such a situation, the Licensor will use reasonable endeavours to circumvent these companies and restore services, for example via the use of backup communication lines if available.

6.13 Support and maintenance services are subject to a fair use policy. The Licensor may have to curb the usage of the support service should the Licensee become a persistently high user whereby it can be shown that the causes of the usage are configuration changes initiated by the Licensee and not faults or errors. At this point the Licensor will engage with the Licensee to ascertain the reason for persistent high usage and work on solutions that will allow the usage to return to a more reasonable level. In cases of sustained high usage due to configuration changes initiated by the Licensee then the Licensor reserves the right to notify the Licensee that the work will become chargeable and then charge the Licensee the hourly rate applicable at the time.

7 SYSTEM MONITORING

The Licensor will make reasonable endeavours to monitor the operation of the Systems using remote technologies and alert the Licensee should any fault be detected to the normal operation in accordance with the SLA. At this point the Licensor will endeavour to support the Systems as set out in clause 6.

8 LICENSEE'S UNDERTAKINGS

8.1 Except to the extent permitted to the Licensee as a lawful user of the Systems (and to the extent permitted by law), the Licensee undertakes not to:

- 8.1.1 make copies of the Systems, in whole or part;
- 8.1.2 copy, adapt, modify or translate the Program Documentation without the prior written consent of the Licensor;
- 8.1.3 translate, disassemble, decompile, reverse engineer, adapt, vary or modify the Systems without the Licensor's prior written consent. Notwithstanding this clause 8.1.3, in the case of reverse analysis where permitted by applicable law, the Licensee may incidentally decompile the Systems only if it is essential to do so in order to achieve interoperability of the Systems with another software program or hardware ("Permitted Purpose") and provided the information obtained by the Licensee during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without the Licensor's prior written consent and is not used to create any software which is substantially similar to the expression of the Systems nor used in any manner which would be restricted by copyright;
- 8.1.4 delete, vary or obscure any copyright or other proprietary notices on or in the Systems;
- 8.1.5 rent, lease, sub-license, assign, transfer or distribute the Systems except for the purpose in which it is intended.

8.2 The Licensee undertakes during the continuance of the Agreement to:

- 8.2.1 keep the Systems and all copies under the Licensee's effective control and to maintain adequate security measures to protect the Systems from access or use by any unauthorised person;
- 8.2.2 ensure that, prior to the use of the Systems by its employees or agents, all such parties are notified of the terms of this Agreement;
- 8.2.3 maintain an accurate and up-to-date record of all copies of the Systems and to produce such record to the Licensor on request from time to time.
- 8.2.4 prepare the Site and provide a suitable place, conditions, connection points and electricity for the Equipment at the Site in accordance with the Licensor's reasonable instructions, if any;
- 8.2.5 obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross other people's land or permission to put Equipment on their property

8.3 The Licensee is responsible for the Equipment and agrees to take reasonable steps to ensure nobody (other than someone authorised by the Licensor) adds to, modifies or in any way interferes with it. The Licensee will be liable to the Licensor for any loss or damage to the Equipment, except where such loss or damage is due to fair wear and tear or is caused by the Licensor, or anyone acting on the Licensor's behalf.

8.4 The Licensee shall use the Services, Systems and Equipment strictly in accordance with the Program Documentation.

8.5 The Licensee shall not itself or knowingly permit any user to use the Licensor's network or Services, Systems or Equipment to do any of the following:

- 8.5.1 publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
- 8.5.2 threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- 8.5.3 engage in illegal or unlawful activities through the Licensor's network;
- 8.5.4 knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Licensee, or any users (as appropriate);
- 8.5.5 knowingly make available or upload files that contain a virus or corrupt data;
- 8.5.6 falsify the true ownership of software or other material or information contained in a file that the Licensee, or any user makes available via the Licensor's network;
- 8.5.7 "spam" or otherwise deliberately abuse any part of the Licensor's network;
- 8.5.8 obtain access, through whatever means, to notified restricted areas of the Licensor's network.

8.6 If the Licensee becomes aware that any user is using the Licensor's network to perform any of the activities listed in Clause 8.5 it shall enforce the applicable terms in its agreement with its user(s) and shall use best endeavours to stop such user from doing so. In the event that the Licensor becomes aware that a user is performing any of the activities listed in Clause 8.5, the Licensor shall bring the breach to the attention of the Licensee in writing. If

the Licensor has not received, within one (1) Working Day of dispatch of such a message, a satisfactory response from the Licensee detailing the actions that have been taken to stop a user performing in this way, which actions may include restricting the access of the user to the Licensor's network or disconnecting the user from the Licensor's network, then the Licensor shall have the right to restrict the access of and/or disconnect the user(s) in question, and if necessary the entire Service, from the Licensor's network. If the Licensor exercises its rights to disconnect a user it will notify the Licensee as soon as reasonably practicable in the circumstances.

9 ACCESS AND SITE REGULATIONS

9.1 The Licensee agrees to take reasonable steps to provide access to the Site and to ensure that the end user provides the Licensor with access to the end user's site including for the purpose of installation and use of the Equipment at the Site and/or at the end user's site.

9.2 The Licensor agrees to observe the Licensee's and the end user's reasonable site safety and security requirements of which they have been made aware of in writing.

9.3 The Licensee agrees to ensure that the end user provides a suitable and safe working environment for the Licensor at the Site and/or the end user's site. The Licensee agrees to indemnify the Licensor against all loss, damages, liabilities, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Licensor if the Licensee is in breach of this sub-clause. The limitation of liability provisions of this Agreement do not apply to this indemnity.

9.4 It is the responsibility of the Licensee or end user to carry out any making good or decorator's work required but the Licensor accepts responsibility for any property damage caused by the Licensor's negligence subject to the limitation of liability provisions of this Agreement.

10 INTELLECTUAL PROPERTY RIGHTS

The Systems and all Intellectual Property Rights of whatever nature in the Systems are and shall remain the property of the Licensor and the Licensee agrees to immediately notify the Licensor if it becomes aware of any infringement or any unauthorised use of the Systems by any person and the Licensee expressly agrees not to claim or allow any user to claim any Intellectual Property Rights in respect of the Systems.

11 INTELLECTUAL PROPERTY INDEMNITY

11.1 The Licensor agrees to indemnify the Licensee against all actions, claims, proceedings, damages, costs and expenses arising from any actual infringement of Intellectual Property Rights arising from the Licensee's use of the Systems anywhere in the world provided such use is in accordance with the terms of this Agreement and that the Licensee promptly notifies the Licensor in writing of any such allegation.

11.2 At the Licensor's request and expense, the Licensee shall permit the Licensor to conduct all negotiations and litigation with third parties. The Licensee shall give all reasonable assistance and the Licensor shall pay the Licensee's costs and expenses so incurred.

11.3 The Licensor may, at its expense, modify or replace the Systems to avoid any alleged or actual infringement and any modification or replacement must not affect the performance of the Systems. If the Licensor is unable to modify or replace the Systems, then the Licensee shall return the Systems which are the subject of the Intellectual Property Rights claim and the Licensor shall refund to the Licensee the corresponding portion of the Service Fee, as normally depreciated, whereupon this Agreement shall immediately terminate.

11.4 This indemnity shall not apply to infringements arising from the combination of the Systems with other items not supplied by the Licensor.

12 WARRANTIES

12.1 Subject to the limitations and exclusions of liability set out below the Licensor warrants that for the term of this Agreement ("the Warranty Period") the Systems will perform in accordance with the specification and the Program Documentation will provide adequate instructions to allow the Licensee to make proper use of the Systems.

12.2 The Licensor warrants that it shall use and adopt only good quality materials, techniques and standards in performing its obligations under this Agreement with the standards of care, skill and diligence required of good computing practice.

12.3 The Licensor warrants that it shall take all reasonable precautions to ensure that the Systems are free from all viruses that could have been detected by using a suitable commercially available virus detection software.

12.4 If within the Warranty Period the Licensor receives written notice from the Licensee of any breach of the warranties given in this clause 12 then the Licensor shall at its own expense and working to a timescale in accordance with the SLA remedy the defect in question.

12.5 The Licensor shall not be liable under the warranties given in clause 12.1 above (i) if the Systems fail to conform to any such warranty because of any corruption, abuse or incorrect use of the Systems (including use of the Systems with equipment or other software which is incompatible) or because of any unauthorised variation or modification to the Systems including but not limited to the matters referred to in clause 6.6 above or (ii) where such breach is the result of the Licensee taking any steps to prevent the Licensor from exercising its obligations under clause 6.4.

12.6 All other guarantees, representations and warranties of any kind, whether express or implied, including, without limitation, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose or ability to achieve a particular result

are hereby excluded, so far as such exclusion or disclaimer is permitted under the applicable law.

12.7 The Licensor does not warrant that the operation of the Systems will be uninterrupted or error free and the Licensee acknowledges and agrees that the existence of such errors shall not constitute a breach of this Agreement.

13 LIMITATION OF LIABILITY

13.1 Subject to clause 13.3, in no event shall the Licensor be liable for any damages, including loss of business, loss of opportunity, loss of data, loss of profits or for any other indirect or consequential loss or damage whatsoever that is an indirect or secondary consequence of any act or omission of the Licensor whether such damages were reasonably foreseeable or actually foreseen.

13.2 Subject to clause 13.3, the total liability of the Licensor to the Licensee under this Agreement shall not exceed such amount as may be recovered by the Licensor from its insurers.

13.3 Nothing in this Agreement shall exclude or limit the liability of the Licensor for fraudulent misrepresentation or for death or personal injury resulting from the negligence of the Licensor or its employees or agents.

13.4 The Licensee shall be liable to the Licensor for all liabilities, claims and costs arising from the acts and omissions of any third parties (including users) using the Services, Systems and Equipment through the Licensee, or relating to the Licensee's use of the Services, Systems and Equipment, except where such liabilities, claims and costs arise from the Licensor's negligence or breach of this Agreement.

13.5 The Licensee agrees to indemnify, defend and hold harmless the Licensor against all liabilities, claims, losses and costs (including reasonable and properly incurred legal costs) arising in connection with the Licensee's use of the Services, Systems and Equipment, by the Licensee's users or any third party using the Services, Systems and Equipment through the Licensee, except where such claims arise from the Licensor's negligence or breach of this Agreement.

14 CONFIDENTIALITY

14.1 Either party receiving information ("the Recipient") from the other marked "confidential" or which may reasonably be supposed to be confidential, including, without limitation, information contained in the Systems, the Specification and other information supplied by the Licensee or Licensor, shall not without the other's prior written consent use such information except for the purposes of this Agreement or disclose such information to any person other than to their own employees or agents who have a need to know.

14.2 Clause 14.1 shall not apply to information that is lawfully known to the Recipient at the time of disclosure or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is ordered to be disclosed to a regulatory body or a court of competent jurisdiction.

14.3 The Recipient shall ensure that any person referred to in clause 14.1 is bound by similar confidentiality terms to those in this clause 14.

14.4 The confidentiality terms in this clause 14 shall remain in full force and effect during the term of this Agreement and upon the termination of the Agreement.

15 TERMINATION

15.1 If either party commits a material breach or persistent breaches of this Agreement, and in the case of a breach which is capable of being remedied, fails to remedy the breach within 14 days of written notice from the other party to do so, then that other party may terminate the Agreement forthwith on giving written notice to the other party.

15.2 Either party may terminate this Agreement immediately in the event that the other party holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986); has a receiver or other administrator take possession of or appointed over or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

15.3 The Licensor may immediately terminate or suspend all or any part of this Agreement or the Services if:

15.3.1 Ofcom determine, or the Licensor reasonably considers, that use of the Services, Systems or Equipment by the Licensee or any user (i) does not constitute appropriate use (ii) is in breach or may be in breach of the Code of Practice for Ofcom or any other relevant statutory or regulatory act, regulation, code or similar (iii) is fraudulent or illegal or may be fraudulent or illegal; or

15.3.2 Ofcom or any other authority of competent jurisdiction revokes the Licensor's or Service Provider's authorisation as Public Electronics Communication Network under the Communications Act and as a result the Licensor can no longer legally comply with its material obligations under this Agreement.

15.4 Either party may terminate the Agreement after the end of the Base Period by giving at least 90 days' prior written notice to the other.

15.5 Upon termination of the Agreement the Licensee shall discontinue use of the Systems and Services and return any copies of the Systems and any Equipment not the property of the Licensee to the Licensor or, if requested by the Licensor, shall destroy the same, provided that the Licensee may extract and store any Licensee data upon a separate media. The Licensee must also permit the Licensor or any Service Provider to enter the Site during

any Working Day for the purpose of removing all or any of the Equipment not the property of the Licensee.

15.6 Any termination of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

15.7 Where the Licensor is entitled to terminate this Agreement, the Licensor shall be entitled to continue to provide the Services to any person or entity making use of the Services or any facility of the Services at the time the Licensor's right of termination arises. The Licensee shall provide any permission or authorisations required enabling the Licensor to continue the uninterrupted provision of the Services and the Licensor shall be entitled to contract directly with and receive payment directly from such users including any fees due by the Licensee to the Licensor under the terms of this Agreement.

15.8 In the event of the Licensee terminating their Services prior to the Base Period, the Licensee agrees to pay any remaining charges from the date of cancellation to the date the Base Period finishes. The Licensor reserves the right to levy a fee for the remaining period. For example, should three months remain on the Base Period and the Services ceases prior to this final date, the Licensor reserves the right to levy a single fee of three months collectively.

16 FORCE MAJEURE

Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances outside its reasonable control, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party in writing of the nature and extent of such events. If such circumstances continue for a continuous period of more than 28 days, either party may terminate this Agreement by written notice to the other party.

17 ASSIGNMENT

The Agreement is personal to the Licensee and may not be assigned without the prior approval of the Licensor. This Agreement is freely assignable by the Licensor.

18 WAIVER

Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this Agreement nor prejudice that party's right to take subsequent action.

19 SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

20 NOTICES

Any notice to be given by either party to the other may be sent by either email, or recorded delivery to the most recent email address, or address notified to the other party, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

21 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Agreement may be varied only by a document signed by both parties.

22 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

SCHEDULE A INTERNET PROVISION SPECIFIC TERMS AND CONDITIONS

This Schedule relates only to Leased Line products and does not relate to any other product or service supplied by the Licensor unless specified herein.

1 Definitions

In this Schedule definitions in the Agreement shall apply and the following expressions shall have the following meanings:

1.1 "Circuit" means a Leased Line circuit whether for the provision of Internet Leased Line Services or Point to Point Leased Line Services;

1.2 "EFM" means Ethernet in the First Mile i.e. using Ethernet protocols up to the Licensee premises;

1.4 "Installation Charges" means the charges payable for installation of Equipment and for the commissioning and configuration of Internet Services, as specified in the Order or as subsequently varied in accordance with the terms of this Agreement;

1.3 "Internet Help Desk" means the telephone helpdesk described in Clause 4.1;

1.4 "Internet Services" means the supply of 1st and 2nd line technical helpdesk services provided by the Licensor to the Licensee as specified in the Order;

1.5 "Leased Line" means a circuit provided by the Licensor as described in Clause 2;

1.6 "Order" means a request for the provision of Internet Services by the Licensee which has been accepted by the Licensor in accordance with Clause 3 of this Schedule;

1.7 "Service Credits" means reductions in certain charges or compensation payments in respect of the Licensor failing to meet specified Internet Service levels, calculated in the manner set out in this Schedule;

2 Description of Leased Line Services

2.1 Leased Line Services are provided as:

2.1.1 Internet Leased Line Services – a dedicated, private, fixed capacity circuit delivered from the Licensor's network to the Site with internet connectivity. These Internet Services may share infrastructure with the Licensor's network and/or that of other Service Providers. Internet Leased Line Services are delivered as a Fully Managed Service with a Licensor supplied router, 24/7 remote monitoring and management by the Licensor's network operations.

2.1.2 Unmanaged Internet Leased Line Services – a dedicated, private, fixed capacity circuit delivered from the Licensor's network to the Site with internet connectivity. These Internet Services may share infrastructure with the Licensor's network and/or that of other Service Providers. Internet Leased Line Services are delivered to the Site, but it is the Licensee's responsibly to supply the termination equipment and to monitor.

2.1.3 Point to Point Leased Line Services – a dedicated, private, fixed capacity circuit delivered point to point between Licensee nominated sites. Point to Point Leased Line Services do not share infrastructure with the Licensor's network and will be delivered as a standalone service which will not be monitored by the Licensor.

3 Orders for Leased Line Services

Orders for Leased Line Services shall be completed according to process set out in this clause.

3.1 Quotations will be discussed and provided to the Licensee according to the required specification.

3.2 Subject to Clause 3.4 the Licensee may be asked to provide a valid Purchase Order for the Leased Line Services. All quotations made by the Licensor shall be deemed to be made subject to the terms and conditions of this Agreement.

3.3 If excess construction charges are applicable in order to provide the Internet Services the Licensor shall notify the Licensee in writing of the charges and the reasons for them. The Licensee shall indicate acceptance of the excess construction charges in writing.

3.4 No Order shall be binding on the Licensor until that Order has been accepted by the Licensor's Provisioning Team by written notice to the Licensee.

3.5 Upon acceptance by the Licensor the Internet Services shall be provided under the terms of this Agreement.

3.6 A request for the upgrade or downgrade of an existing Internet Service shall not be considered a request for services in terms of this clause 3 but on acceptance by the Licensor will be deemed an amendment of the existing Order under which those Internet Services are provided.

3.7 In the event that the Licensee cancels the Order once it has been placed, the Licensee agrees to pay any charges levied by the Service Providers to the Licensor.

4 Support Services

4.1 Help Desk Support

4.1.1 During the Hours of Service specified in Clause 4.2, the Licensor will provide a client service and administration telephone help desk facility ("Help Desk") for the benefit of the Licensee. The Licensor shall accept calls for English language telephone support in connection with Orders and faults during the Hours of Service specified in Clause 4.2.

4.2 Hours of Service

4.2.1 The Help Desk will be available in line with the SLA set out in schedule C. Out of hours contact numbers will be provided if an extended SLA product is in place. During business hours all calls and faults must be reported via the normal support phone number stated on our website.

4.2.2 The support team will aim to deliver proactive updates via email and/or phone, whichever is deemed to be most suitable.

4.3 Scheduled and Emergency Maintenance

4.3.1 From time to time the Licensor may interrupt the Services to maintain, update or enhance software Equipment or other aspects of the Services and/or the Licensor's network ("Maintenance Events"). The Licensor will, where possible, give the Licensee a minimum of 7 Working Days advance notice of such events, and where possible will schedule Maintenance Events so as to cause minimum interruption of the Services. For the avoidance of doubt, it may not be possible to give such notice where interruption to the Services is necessary to deal with Incidents occurring in connection with the Services.

4.3.2 From time to time the Licensor may interrupt the Services to carry out emergency maintenance to the Licensor's network in order to maintain appropriate levels of service quality and to provide where possible minimum impact to the Services.

4.3.3 The Licensee shall give all reasonable assistance to the Licensor to enable Maintenance Events to commence on the planned date and for them to be completed efficiently.
 4.3.4 Any Maintenance Events which occur during Working Days, and which were not requested by the Licensee, shall be considered downtime for the purpose of service availability measurement set out in clause 6.

5 Service Management

5.1 Incident Reporting

5.1.1 The Licensor shall supply monitoring and management of Internet Leased Line Services 24 hours a day 7 days a week. In the event that any Incident is experienced by the Licensee that has not been identified by the Licensor, the Licensee must submit an Incident Report to our support teams via our standard channels as described in Clause 6 of the main Agreement.
 5.1.2 For Point to Point Leased Line and Unmanaged Leased Line Services clause 5.1.1 does not apply and the Licensee will be responsible for the submission of Incident Reports to the Licensor.
 5.1.3 All Incident Reports submitted by the Licensee must provide a complete description of the Incident and any information reasonably requested by the Licensor.
 5.1.4 The support team may require the Licensee to conduct first line diagnostics with any of its users where appropriate. Full instruction and assistance will be given at the time.
 5.1.5 If the Licensee reports any Incident via an email not on a Working Day, the Licensee must place a follow up call to the Internet Help Desk in order to notify the Licensor's engineer of the nature of the Incident.

5.2 Incident Response Timescales

5.2.1 The Licensor shall use best endeavours to assign an Incident to an appropriate engineer within 30 minutes of the generation or receipt of a fault for no less than 95% of Incidents properly submitted to the Licensor by the Licensee in accordance with Clause 5.1.
 5.2.2 The Licensor shall use reasonable endeavours to make an update on an Incident available to the Licensee via email within the response times specified in Clause 5.4.1.

5.3 Incident Resolution Targets

The Licensor shall use reasonable endeavours to clear Incidents within the time scales specified within the Incident classification matrix set out in Clause 5.4.1.

5.4 Incident Classification Matrix

5.4.1 The Incident classification matrix set out below outlines the description, resolution and scheduled updates frequencies for the associated Incident priorities.

Priority	Description	Target Resolution	Licensor Response Time
High	Total loss of Internet Service resulting from a single event. User has total loss of Internet Service/product or degraded beyond usable limits. Degraded Internet Service. E.g. Errors, packet loss to router interface, inability to transmit/receive where business operations are severely impacted.	6 hours (Fibre)	1 hour followed by updates each hour
Medium	Partial loss of Internet Service or degradation of Internet Service, resulting from one event. Partial loss where Internet Service is intermittent or slow throughput. Dribbling errors; packet loss less than 25%; slow throughput;	24 hours	6 hours
Low	Internet Service Enhancement* that requires a change to the existing Internet Service and/or the Licensor's network components that will facilitate Internet Service. (*Internet Service Enhancements exclude speed upgrades which are considered on a case-by-case basis and the Licensor shall endeavour to resolve such requests within 5 Working Days) Internet Service Requests or changes etc	3 Working Days	-

5.4.2 The Licensee understands and accepts that it may be necessary to extend the timescales in the Incident classification matrix above due to the complexity of the Incident or where the Licensor is dependent on a third party for resolution of the Incident. In such circumstances, the Licensor shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Internet Service by provision of a workaround, with permanent correction to follow.

5.5 Clearance of Incidents

The Licensor will clear an Incident reported to the Licensor by the Licensee in accordance with this Schedule and an Incident Report will be considered to have been cleared where either

5.5.1 it is corrected by the Licensor (including the provision of a temporary fix) or;

5.5.2 the Licensor has investigated the Incident and the Licensor's initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of the Licensor; and this has been confirmed by the Licensor to the Licensee.

5.6 Escalation Process

The Licensor will provide an escalation process where an Incident is understood as a clear request for the support of a higher technical or management level in order to clear the Incident. If the Incident is considered to be not progressing in a satisfactory manner or if it is foreseen that the targeted time to repair will not be met, either party may escalate the Incident.

6 Internet Service Availability and Credits

6.1 Overall Internet Service Availability

6.1.1 The Licensor aims to provide the Internet Service with a target of 100% availability at all times, subject to the terms of this Schedule.
 6.1.2 If there is an outage, based on the Licensor's data, the Licensor will apply a reduction to the Licensee's fee for the Internet Service as follows, provided the Licensee reports the outage and claims for a reduction to the fee in accordance with 5.1:

where the outage period is less than the limits set in 6.2, the Licensor will apply a reduction equivalent to one (1) day's fee per hour of downtime for that Internet Service. For the purpose of calculating the outage period, a fraction of one (1) hour will be rounded-up to the nearest hour;

6.1.3 For the purposes of this clause 6.1, overall service availability excludes:

- a) scheduled Maintenance Events as described in clause 4.3;
 - b) Licensee-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Licensor to provide the Internet Service); or
 - c) outages or disruptions attributable in whole or in part to force majeure events as defined in clause 18 of the main Agreement;
- 6.1.4 For the purpose of calculating availability, "Unavailable Time" means a period of time when there is a total break in transmission.

6.2 Limit on compensation

6.2.1 Any Service Credits due to the Licensee shall be the Licensee's sole and exclusive remedy with respect to such failures and shall be in lieu of any other remedy which the Licensee may have at law.
 6.2.2 The maximum compensation for unavailable time the Licensee can receive in any month is an amount equal to 100% of the fee due in respect of that Internet Service for the month in which the failure(s) occur and the maximum compensation in aggregate the Licensee can receive is an amount equal to 25% of the annual fee for the Internet Service for the period covered by a 12 months' cycle, the first such cycle starting on the Start Date.

6.3 How the Licensor will pay Service Credits

6.3.1 Any compensation payable will be offset against the Installation Charges by the Licensor on the Licensee's invoice in respect of the Installation Charges.
 6.3.2 Any compensation payable will be credited on the Licensee's invoice for Service Fees for the following period unless the Circuit is terminated in which case a specific payment will be made. The Licensor may offset all or part of any such amounts against any outstanding amounts due for the Services, Systems or Equipment which has not been paid by the Licensee, except where these amounts may be disputed.

6.4 Exclusions from service availability and Service Credits

The service levels, service guarantees and any Service Credits will not apply if:

- 6.4.1 the failure by the Licensor is due to the Licensee's own network or Licensee Provided Equipment or any other network or equipment outside the Licensor's network; or
- 6.4.2 the Licensee is in breach of any part of this Agreement or the Licensor suspends the Internet Service or any part of it in accordance with this Schedule; or
- 6.4.3 through no fault of its own or because of circumstances beyond its reasonable control, the Licensor is unable to carry out any necessary work at, or gain access to the Site and/or an end user's site or the Licensee fails to agree an appointment date or work is aborted; or
- 6.4.4 the Licensee and the Licensor agree a different timescale for performance of the Internet Service, but will apply to any new Start Date agreed, provided that the new date is after any previous Start Date(s); or
- 6.4.5 reasonable assistance is required or information is reasonably requested by the Licensor or a Service Provider from the Licensee, end user or a third party and such assistance or information is not provided; or
- 6.4.6 through no fault of its own, the Licensor is unable to obtain any necessary permissions or consents required in connection with the performance of a particular service level; or
- 6.4.7 the failure is due to a Force Majeure event; or
- 6.4.8 the failure is due to a scheduled Internet Service outage; or
- 6.4.9 the failure is due to an inaccurate Order being submitted by the Licensee; or
- 6.4.10 the fault is not reported in accordance with clause 5.1 for Point to Point and Unmanaged Leased Line Services.

6.5 Network Performance

6.5.1 The Licensor's Packet Success Service Level Guarantee

The Licensor's packet success goal is based on the successful delivery of packets through the Licensor's IP network. Unsuccessful packets are deemed to be those dropped due to transmission errors or router overload.

• The Licensor's packet success Service Level Guarantee ("PS Guarantee") is successful delivery of packets will meet or exceed 99% between the Licensor's designated IP backbone

paths for Leased Line Services.

- The measurement consists of 50 100-byte pings sent every 15 minutes. A daily average will be calculated using these 96 samples. The daily measurements will be averaged to calculate a monthly average.

- Should the Licensor fail to meet the PS Guarantee in two consecutive calendar months, the Licensee is entitled to a one (1) day prorated credit of the fee related to the Internet Service for the second month and an additional one (1) day prorated credit for any consecutive month in which the PS Guarantee is not met. To receive the credit the Licensee must contact the Licensor's customer service group within 30 days of the end of the month for which credit is requested. Credits will be paid to the Licensee in terms of clause 6.3.

6.5.2 The Licensor's Latency Service Level Guarantee

The Licensor's latency Service Level Guarantee ("Latency Guarantee") is based on an average round-trip transmission between the Licensor's designated backbone POPs for Licensor services. Latency shall be measured by the Licensor averaging sample measurements taken during a calendar month between such backbone POPs.

- Latency of 50ms or less - The measurement consists of 50 100-byte pings sent every 15 minutes. A daily average will be calculated using these 96 samples. The daily measurements will be averaged to calculate a monthly average.

7 Charges Mandated by Service Provider

The Licensor reserves the right to pass on to the Licensee on a cost-plus basis (adding 10%) any charges levied by the Service Provider to which it is exposed as a result of the Licensee and/or its users' actions.

8 Connection of Equipment

8.1 Any equipment connected to the Internet Service must be:

8.1.1 technically compatible with the Internet Service and not harm the Licensor's network, the Internet Service or other Equipment or another party's network or equipment;
8.1.2 connected and used in line with any relevant instructions or laws; and
8.1.3 connected and used in line with any relevant standards including, in the order of precedence set out below:

- (i) Any legal requirements imposed upon the parties including requirements arising from General Condition 2 set under section 45 of the Communications Act 2003;
- (ii) any relevant specification notified by Ofcom in implementation of the recommendations of the Network Interoperability Consultative Committee;
- (iii) any recommendations by the European Telecommunications Standards Institute; and
- (iv) any recommendations by the Telecommunications Standards Bureau (formerly the International Telegraph and Telephone Consultative Committee) of the International Telecommunication Union.

8.1.4 The Licensee agrees to connect equipment to the Internet Service only by using the NTE provided by the Licensor with the Internet Service.

8.1.5 The Licensor will not be liable for failure to meet any service level or other obligations under this Schedule if any equipment is found to be connected otherwise than in accordance with this clause.

8.1.6 The Licensor reserves the right to disconnect any Licensee Provided Equipment if the Licensee does not fulfil its obligations under this Clause 8 or if in the reasonable opinion of the Licensor, Licensee Provided Equipment is liable to cause the death of, or personal injury to any person.

SCHEDULE B HOSTED TELEPHONY SPECIFIC TERMS AND CONDITIONS

This Schedule relates only to Hosted VoIP Telephony products and does not relate to any other product or service supplied by the Licensor unless specified herein.

1 "Phone Service" means the supply of a hosted VoIP telephony platform for the Licensee's use and the Licensee's users;

2 The Licensor reserves the right to refuse to connect any of the Licensee's users to the Phone Service

3 The Licensor will provide the Licensee with an internet portal account through which the Phone Service can be controlled online. The Licensor shall use reasonable endeavours to maintain (but does not guarantee) access to such account 24 hours a day 7 days a week including Public Holidays. The Licensor shall not be responsible for any losses caused by any restrictions in such access.

4 The Phone Service supports public emergency call services on standard numbers (including 999) and such calls will be routed to the national emergency call handling agents. However these services do not operate in the same way as PSTN fixed line public emergency call services and connection to such services may not be possible in the event of a service outage cause by loss of connectivity to the internet for whatever reason. In such circumstances the Licensee should use a separate line to make the emergency call. Furthermore it may on occasions not be possible for emergency services personnel to identify the Licensee's location and phone number so this information should be stated promptly and clearly by the Licensee when making such a call.

5 The Phone Service permits the Licensee to upload music files for music on hold feature. The Licensee agrees to obtain any necessary licences and consents as may be required and agrees to indemnify the Licensor from any direct or indirect claims where the Licensee or its users fail to do so.

6 The Licensor does not accept liability for breaches of the Phone Service system, nor any call charges that might arise from such a breach. It is the Licensee's responsibility to ensure the security of their system and/or equipment.

7 The Licensor may immediately terminate or suspend all or any part of this Agreement or the Services if:

7.1 Ofcom or PhonepayPlus determine, or the Licensor reasonably considers, that use of the Services, Systems or Equipment by the Licensee or any user (i) does not constitute appropriate use (ii) is in breach or may be in breach of the Code of Practice for Phonepay Plus or Ofcom or any other relevant statutory or regulatory act, regulation, code or similar (iii) is fraudulent or illegal or may be fraudulent or illegal; or

7.2 Ofcom or any other authority of competent jurisdiction revokes the Licensor's or Service Provider's authorisation as Public Electronics Communication Network under the Communications Act and as a result the Licensor can no longer legally comply with its material obligation under this Agreement.