

# Terms & Conditions of Service

## MASTER SERVICE AGREEMENT FOR THE PROVISION OF TELEPHONY SERVICES

Acuity Networks Limited (Company No.7102535) whose registered offices are at 2nd Floor, Sheldon Chambers, 2235-2243 Coventry Road, Birmingham B26 3NW ("Acuity") agrees to provide the Services and/or Products to the Customer as specified in this Agreement and the Schedules and the Customer agrees to use the Services and/or Products on the terms set out in this Agreement and the Schedules:

### 0 The definitions and rules of interpretation below apply in these terms and conditions:-

#### 0.1 Definitions

**Acceptable Use Policy:** means our guidelines for acceptable use made available at [www.acuitynetworks.co.uk](http://www.acuitynetworks.co.uk) which may be amended from time to time.

**Accepted Order:** means an Order that has been approved and accepted by the Supplier, and the Customer has been notified in writing including by email by the Supplier of the acceptance of such Order.

**Access Numbers:** means any Inbound Number provided in order to provide the Service(s).

**Act:** means the Communications Act 2003

**ADSL:** means Asymmetric Digital Subscriber Line.

**ADSL Internet:** means the Supplier's ADSL Internet connection and (where applicable) a router and associated cables and filter(s), lease services, email accounts and web hosting services, IP address services, firewall services, maintenance and support services, and the provision of an ADSL service and supply of a telecommunications circuit capable of supporting DSL services at the Site and the provision of telecommunication services over such circuit and such other similar services as are agreed to be provided from time to time and set out in the Order.

**Advanced Services:** means Call Recording, Call Whisper, Voicemail, Advanced Statistics, IVR, IVR Reporting Services, Auto Attendant or any other such service to be supplied by the Company to the Customer full particulars of which are set out in the Order from time to time.

**Advanced Statistics:** means the supply of calling pattern information in a graphical format.

**Agents:** means individuals, organisations, corporate or unincorporated bodies used by the Supplier to assist in the installation, provision and/or ongoing running and maintenance of the Service.

**Agreement:** means these terms and conditions (including the Schedules) together with the Order and the Price List.

**Artificial Inflation of Traffic:** means a situation where the flow of calls is disproportionate to the flow of traffic of calls that would be expected from any good faith commercial practice and usage of the Network.

**Associated Company:** means any company which is a holding company or subsidiary of the Company or any subsidiary of a holding company of the Company.

**Auto Attendant:** means the pre-programmed automated routing of Inbound Calls to a particular Customer's departments or destinations.

**Backdated Charges:** means any charges for a previous billing period, that were omitted to be invoiced to the Customer for technical or other reasons.

**BT:** means British Telecommunications Plc or its agents and or subsidiaries.

**Business Day:** means any day which is not a Saturday, Sunday or public holiday in the UK.

**Call Barring:** means the ability by the customer to prevent certain types calls to certain types of destinations or numbers from passing over the Customer's Telephone Service.

**Call Charge:** means the Supplier's charges for calls made on the Network by the Customer.

**Call Recording:** means the recording of call conversations made using the Inbound Service.

**Call Routing:** means the ability to make calls from your Site on the telephone Line(s) that we provide or your existing telephony supplier provides in conjunction with any related Services that we have agreed to provide, under this Agreement from time to time.

**CallSave:** means the CPS service provided by the Supplier.

**Call Whisper:** means the pre-recording of call conversations made using the Inbound Service.

**Cancellation Period:** means the period in which You may terminate the contract without incurring obligations and/or associated charges as set out under statute.

**CDR:** means call detail record.

**Carrier:** means the Network Operator providing the installation of the ADSL Lines into the Site

**Charges:** means any or all of the charges and fees payable by the Customer for the Services pursuant to this Agreement and the Training Charges as set out in the Price List, or the Customer's signed Order or such other form of published material notified by the Supplier from time to time;

**CLI:** means calling line identity

**Company:** means Acuity

**Connection Point:** means a terminal block, a socket for a removable plug, a distribution frame, or any other device which the Supplier fixes in any of the Sites to connect the Customer Equipment to an Exchange Line if required to supply the Service.

**Confidential Information:** means any information, whether communicated orally or in documentary or other form, which relates to the business affairs of the Supplier including, without limitation, any information relating to products, suppliers, customers, pricing, policies, methods, business plans and strategies, operations, technical processes, designs, trade secrets and financial affairs, in all cases whether expressly stated to be confidential or not.

**Contract:** means this Agreement.

**Contractors:** means individuals, corporate or unincorporated bodies, organisations used by the Supplier to assist in or provide the installation and/or provision of the Services and/or maintain the Services

**CPS:** means carrier pre-selection, which is the right to select a preferred carrier to route telephone calls across an alternative Network to that at the BT local telephone exchange.

**Credit Limits:** means the maximum amount of unpaid Charges that the Customer may accumulate agreed pursuant to clause 8.6.

**Customer:** means the individual or business or corporate or unincorporated body or group which has agreed to purchase the Services, as named in the Order.

**Customers Access Connection:** means the physical wires or other type on medium used to access the Site by the Network Operator

**Customer Equipment:** means apparatus in hardware or software form belonging to the Customer not forming part of the Equipment but which may be connected to the Equipment and network facilities and telecommunications services in required to be provided by the Customer in order to receive the Services.

**Customer Nominated Contact:** means the person whom the customer has stated on the order form is the contact for all aspects of the installation and ongoing management of the Service.

**Data:** means information including, documents, text, software, music, sound, photography, messages, and other material of any kind in any form.

**Data Protection Act or Data Protection Legislation:** means the Data Protection Act 1998,

**DSL:** means Digital Subscriber Line.

**Early Termination Fee:** means the Set-up Cost plus the proportion of the lost fees for the Minimum Term or the Renewal Period determined pursuant to clause 6.7 or the lost fees determined in accordance with any relevant Schedule whichever is the greater that remain outstanding and payable in accordance with clause 6.8 of this Agreement or any relevant Schedule (if applicable).

**End User:** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Service provided by the Supplier to the Customer

**Equipment:** means any and all equipment including computer equipment and software supplied by the Supplier or its Agents or its Contractors that may be required to provide the Services.

**Exchange Line:** means apparatus forming part of the Network used by the Supplier to connect the Site to a telephone exchange to provide the Telephone Service.

**Geographic Number:** means a telephone number with a geographical area prefix for a particular STD code area.

**Group Company:** means in relation to any company, that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company

**holding company and subsidiary:** means a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2009 [and a company shall be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:- (a) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members’ rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

**Inbound Number:** means the Geographic Number or Non Geographic Number or Premium Rate Number provided by the Supplier from time to time to the Customer for the purpose of receiving inbound calls..

**Inbound Calls:** means telephone calls to the Customer.

**Inbound Service:** means any or all of the provision of a Geographic Number, Non Geographical Number Services, NGNS, or Premium Rate Services provided by the Supplier particulars of which are set out in the Order.

**Initial Connection:** means the Start Date.

**Installation Costs:** means the initial installation cost to the Customer for connecting to the Network and providing the Service to the Customer by the Supplier. .

**Installation date:** means the date when the Service is installed in the site.

**Internet:** means the global data network comprising interconnected networks to which we are connected and provide access to you via the Services.

**ICSTIS:** means the Independent Committee for the Supervision of Telephone Information Services or any similar body that may be appointed in addition or in substitution from time to time.

**Intellectual Property Rights or IPR:** means all of the following: (a) works of authorship, copyrights, including moral rights, registrations and applications for registration thereof; (b) patents, patent applications and all related continuations, divisional, reissue, utility models, applications and registrations thereof, inventions (whether patentable or not), designs, trade marks (whether registered or not, including applications) and domain names; (c) trademark and trade name rights and similar rights; (d) trade secrets and Confidential Information, know-how, manufacturing information, system process and techniques, designs, prototypes, enhancements, improvements, customisation, work-in-progress, research and development information; (e) other proprietary rights relating to the foregoing.

**IVR:** means interactive voice response

**IVR Reporting:** means the provision of a pre-recorded response to an incoming caller upon recognition of certain voice commands prompted to be made by the pre-recorded response by that incoming caller.

**LCR:** means least cost routing, which is a method of automatically selecting the least costly facility for transmission of a telephone call

**Line:** means a connection to the BT telephone exchange network;

**LineSave:** means the WLR service provided by the Supplier.

**MSA:** means Master Service Agreement for the provision of telephony services

**Migration Access Code (MAC):** means a code to identify your DSL service and DSL provider, which is required when migrating services from one provider to another provider.

**Minimum Period:** means twelve (12) months from the Start Date or such other period as agreed in writing between the Supplier and the Customer.

**Minimum Term or Minimum Period:** means twelve (12) months from the Start Date or such other period as agreed in writing between the

**Network:** means the telephone network that the Supplier uses to provide the Service

**Network Operator:** means an organisation providing telecommunications services as described in the Act.

**Non Geographic Number:** means a telephone number without a geographical area prefix or STD code which does not relate to a specific geographic area.

**Non Geographical Number Services or NGNS:** means the ability to route inbound calls to target Geographic, Non – Geographic, and Primary rate numbers used by the Customer to receive inbound calls from customers.

**Normal Business Hours:** [8.00 am to 6.00 pm] local UK time, each Business Day.

**Number Portability:** means the ability to provide the Customer with the telephone number already in use by the Customer on a telephone line provided by another Network Operator or service provider to the Customer.

**Number Portability Functional Specification:** means the Number Portability Functional Specification document which is published by OFCOM (or any other competent successor body or authority), as may be amended by OFCOM

from time to time, and which is currently published at the following URL: <http://www.ofcom.org.uk>;

**Numbers:** means a Geographic Number, Non-Geographic Number or Premium Rate Number as provided by telecommunications Network Operators and/or any other telecommunications service providers or any other telephone number(s) provided by the Supplier to the Customer under this Agreement;

**Number Translation Services or NTS:** means the 0800, 0808, 0844, 0845, 0870, 0871, 0333, 0303, and other geographic / non-geographic inbound call services to be provided to the Customer where the called party is the Customer.

**Offending Material:** means any material, data, images or information that is:

- (i) in breach of any law, regulation, code of practice or the Supplier's acceptable use policy or
- (ii) abusive, indecent defamatory, obscene or menacing or otherwise offensive or
- (iii) in breach of confidence, IPR, privacy or any right of a third party.

**OFCOM:** means the Office of Communications or any similar Government office that may be appointed in addition or in substitution.

**Order:** means the service order signed by the Customer or such other document signed by the Customer that the Supplier deems to constitute the order within which the Customer has offered to acquire the Services and which refers to any special terms and conditions relating to a particular Service.

**PhonepayPlus:** means the organisation who's website can be found at [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk) and who is responsible for regulating the content, promotion and overall operation of Premium Rate Services in the UK.

**Premium Rate Number:** means a number with a prefix 09 designated for the provision of Premium Rate Services.

**Premium Rate Services:** means a telephone service as prescribed by Section 120 of the Communications Act 2003, and regulated by ICSTIS and/or PhonepayPlus which offers information, advice, entertainment or other content, and/or products or services particulars of which will be set out in the Order.

**Portal:** means the access portal supplied by the Supplier for use by the Customer to manage the routing of the calls to the Number.

**Price:** means any or all charge or charges as identified by the Supplier to the Customer as being relevant to the Services to be provided to the Customer and that appear on the Price List.

**Price List:** means the list(s) of the Charges, current at the time you use the Service, as published by us from time to time.

**PSTN:** means Public Switched Telephony Network.

**Rate Adaptive:** means the technology used to increase ADSL download speeds traded off against upload speeds when Line noise and signal loss is present.

**Registry:** means either Nominet UK Limited, CentralNIC Limited or Tucows Inc, or any other domain names registry that we choose to use from time to time.

**Renewal Period:** means the period after the Minimum Term as defined in clause 6.1 or such other renewal period that the Customer has agreed in writing with the Supplier.

**Rental:** means the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Service, as set out in the Order or otherwise notified by the Supplier.

**Revenue Rebate:** means sums payable by the Company to the Customer in respect of Access Numbers that generate a rebate.

**Revenue Statement:** means the statement supplied by the Company to the Customer detailing the amount of the Revenue Rebate due for the previous quarter.

**Schedules:** means the Supplier's standard schedule(s) to these terms and conditions that contain the special terms and conditions relating to a particular Service.

**Services:** means the services that the Supplier has agreed to supply to the Customer, as set out in the Order and the Accepted Order.

**Set up Cost:** means the Installation Costs

**Site:** means any or all of the Customer's sites, properties or premises at which the Supplier is providing the Service.

**STD:** means Subscriber Trunk Dialling.

**Subcontractor:** means a person or business which has a contract as an "independent contractor" and not an employee with the Supplier to provide some or all of the work or services needed in order to supply the Service or Services

**Subscriber Trunk Dialling:** means the ability to deal a Geographical Number direct without the need for operator assistance.

**Supplier:** means the Company, trading as Acuity or Acuity Networks, and its successors or Associated Company or any other such company as the Company may assign their rights under this Contract to.

**Supplier's Equipment:** means any equipment owned by the Supplier or its licensors and/or Agents and/or Contractors that the Supplier uses to provide the Services.

**Start Date:** means the date the Services are first delivered to or supplied and available for use by the Customer.

**Target Number:** means the Number calls are directed to.

**Telephone Directory:** means a telephone directory published by BT or any other operator (as appropriate).

**Telephone Service:** means the telephone service that the Supplier provides to the Customer by means of the Network.

**Telephone Line:** means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Site as notified by the Customer to the Company.

**Term:** means the length of this Agreement including the Minimum Term and the Renewal Period.

**Training:** means time spent teaching the Customer about the Services.

**Training Charges:** means the charges payable by the Customer to the Supplier in respect of the time spent teaching the Customer about the Services and as ordered by the Customer and written on the Order and agreed in writing to be provided by the Supplier.

**Voice mail:** means the ability to leave and retrieve messages to a Number.

**Website:** means [www.acuitynetworks.co.uk](http://www.acuitynetworks.co.uk).

**Working Day:** means 09:00 to 17:30 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Supplier.

**WLR:** means wholesale line rental, which is the transfer of the management of a customer's telephone Line.

**"we" and "us":** means Acuity Networks Ltd or our Agents or Contractors, subsidiary, parent companies or Group Companies.

**"you":** means you, the Customer with whom we make this agreement.

0.2 Words importing the singular also include the plural and vice-versa where the context requires.

0.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## 1. PROVISION OF SERVICES

- 1.1 The Agreement between the Supplier and the Customer shall be on these terms and conditions and the Supplier's terms and conditions in respect of any particular Service ordered by the Customer as set out in the Order and any Schedule [or the website at [www.acuitynetworks.co.uk](http://www.acuitynetworks.co.uk)]. The Agreement shall exclude any terms and conditions which the Customer purports to apply under any Order, specification or other document and no terms or conditions endorsed on, delivered with or contained in the Customer's Order, specification or other document shall form part of the Agreement simply as a result of such document being referred to in this Agreement. Each Order by the Customer from the Supplier shall be deemed to be an offer by the Customer to acquire the Services subject to the terms and conditions in this Agreement and the Supplier's terms and conditions in respect of any particular Service as set out in the Order and the Customer shall ensure that the terms of the Order and any applicable specifications are complete and accurate. The Customer must ensure that the Order states the Customer Nominated Contact, an email address and a contact phone number which has a facility to leave messages for that Customer Nominated Contact. The Customer shall be responsible for maintaining and regularly checking any messages left at this email address and contact phone number. The Customer shall be entitled to update details of the Customer's email address and phone number by contacting the Supplier on the number provided in the Order. The Supplier reserves the right to use this email address to notify the Customer for all purposes concerning the operation of the Services. No Order placed by the Customer shall be deemed accepted by the Supplier until a written acknowledgement, approval and acceptance of the Order is issued by the Supplier. Each Order received by the Customer will comprise a separate Agreement between the parties unless the Order specifies that it is an amendment to an existing contract and identifies that existing contract.
- 1.2 The terms and conditions in this Agreement and the Supplier's terms and conditions in any Order, in any Schedule and at the website [[www.acuitynetworks.co.uk](http://www.acuitynetworks.co.uk)] shall apply to all the Services provided to the Customer and any variation shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in this Agreement. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 1.3 Provided that there is not in place any other legally binding and valid arrangement with any other telecommunications service that would prevent the Supplier from providing the Services, the Supplier shall use reasonable endeavours to provide each of the Services acquired by the Customer within 20 working days (unless otherwise expressly agreed in writing and signed by a Director of the Company on the Customer Order form) from the date when an order relating to such Service becomes an Accepted Order on the proviso that this time frame is intended to be an estimate only and it shall not be made of the essence by notice and any failure to provide the Services within this timeframe will not constitute a breach of this contract.
- 1.4 The Services are supplied subject to the Supplier receiving full and uninterrupted service from its Network including without limitation the risk of imposed prefix or number changes. In particular the Supplier is unable to guarantee that the Customer will be able to access the Service by using the Number via any overseas Networks and/or telecommunications systems or that any such overseas Networks and/or telecommunications systems will work in conjunction with the Service.
- 1.5 The Supplier will endeavour to deliver the Services in line with any descriptions or illustrations contained in the Company's promotional material issued or published, but all such descriptions and illustrations are published for the sole purpose of giving an approximate idea of the Services and they shall not form part of this Agreement.
- 1.6 The Supplier shall be entitled without liability to:
  - 1.6.1 change the technical specification of the Services (provided that such changes do not materially affect the performance of the Services) where necessary for operational reasons, statutory or regulatory requirements or any other reason that the Supplier considers necessary to provide the Services the Supplier will endeavour to give the Customer reasonable notice in advance;
  - 1.6.2 give the Customer instructions (which the Customer shall comply with) which the Supplier believes to be necessary for health and safety reasons or for maintaining the quality of the Services;
  - 1.6.3 make modifications, renewals, alterations or additions to the Equipment or any Service (including without limitation conversions, shifts, reconfigurations and renumbers). Such alterations may result in some disruption to the Service although the Supplier will use reasonable endeavours to minimise any disruption to the Customer, and where practicable, the Supplier will endeavour to give the Customer reasonable notice in advance; and
  - 1.6.4 refuse any order for the Services at its sole discretion, including without limitation where as a result of the proposed order the total value of Charges in any applicable period exceed any agreed Credit Limits; and
  - 1.6.5 refuse to provide any Services at its sole discretion, after the issuing of an Accepted Order but prior to the Start Date provided that if the Supplier so refuses (other than as a result of the Customer's own act or omission), any Charges the Customer has already paid will be refunded.
- 1.7 The Supplier warrants that:
  - 1.7.1 the Services will be performed substantially in accordance with their descriptions and with reasonable skill and care but this warranty shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised Sub-contractors or Agents;
  - 1.7.2 it shall employ or engage in the provision of the Services persons who are appropriately qualified, skilled and competent in the area in which they are employed or engaged; and
  - 1.7.3 it shall comply with the General Conditions and any Special Condition applicable to it under the Act in respect of the Supplier Services.
- 1.8 The Supplier does not warrant that the Customer's use of the Services will be fault free or free of interruptions and the Customer acknowledges that the Services may be subject to limitations, delays, failures and other problems inherent in the use of such communication facilities or caused by Network Operators or other service providers. The Supplier accepts no responsibility or liability for any claims, losses, damages, expenses and costs incurred by the Customer as a result of such failures or delays.
- 1.9 If the Customer reports a fault with regard to any Service the Supplier will make commercial endeavours to resolve the fault promptly in line with a competent telecommunications operator offering such services in the United Kingdom provided that the fault has arisen from normal use of the

Equipment or Service.

- 1.10 The Supplier cannot be held responsible for any fees or charges imposed by another Network Operator or service provider and the Customer agrees to indemnify and hold the Supplier harmless against any claims, actions, proceedings, losses, damages, out of pocket expenses and costs (including without limitation court costs and reasonable legal fees).
- 1.11 The Supplier may change the conditions or service levels relating to a Service in order to reflect contractual changes imposed by its suppliers (including without limitation with BT) or any decision, request by or change in the regulatory regime by the relevant regulatory authorities.
- 1.12 The Supplier shall be entitled to sub-contract any obligations it may have under this Agreement. The Supplier may at its sole discretion provide any of the Services either directly or through some combination of sub-contractors, agents, subsidiaries and/or subsidiaries of the Supplier's holding company or any other Group Company.
- 1.13 The Supplier may have to sub-contract certain elements of the Services to third party telecommunications providers. Whilst the Supplier will endeavour to comply expediently with all its obligations with any regulatory processes, the Supplier cannot warrant such compliance by the third party telecommunication provider and therefore cannot offer any guarantees that your application for those Services will be successful or the quality of the service to be provided by that third party telecommunication provider. The Customer acknowledges that delivery of the Services may be dependant on the actions of BT and/or any other Network Operator or telecommunications or services providers and that the Supplier cannot therefore be liable for any faults or delays or interruptions to the Service caused by third parties or events outside the Supplier's control.
- 1.14 The Supplier shall be entitled to record any or all telephone calls made by the Customer or any End User to the Supplier in order to monitor the quality of the support or the service provided or for training purposes.
- 1.15 It is a condition of this Agreement that you comply at all times with our Acceptable Use Policy. If the Customer breaches the Acceptable Use Policy at any time the Supplier shall be entitled to suspend or restrict provision of the Services and immediately terminate this Agreement (without liability) and/or take such as action may be appropriate.

## **2. PROVISION OF INFORMATION AND CO-OPERATION**

- 2.1 The Customer and the Supplier agree to promptly supply each other upon request with all information and assistance which may reasonably be required to enable the other to perform their respective obligations hereunder or which is necessary to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 2.2 The Customer shall provide the Supplier and any of its employees, Agents, or Sub-Contractors with such information about the Customer's Sites and their apparatus at those Sites including any services provided by any other Network Operator on the Customer's telephone Line.
- 2.3 The Customer shall be solely responsible for providing any information, access to premises for the Supplier and its Subcontractors and or its Agents, and any other co-operation needed by the Supplier in connection with the provision of the Services.
- 2.4 Where the discharge of the Supplier's obligations under this Agreement involves the processing of personal data on the Customer's behalf, the Customer appoints the Supplier as the Customer's data processor to process the personal data on behalf of the Customer for the purposes of this Agreement. Where the Supplier carries out such processing, it will do so in accordance with the provisions of the Data Protection Legislation.
- 2.5 Prior to any installation of the Equipment at the Site, the Supplier shall supply the Customer with the relevant information to enable the Customer suitably to prepare the Site for delivery and installation of the Equipment. The provisions will include without limitation a secure electricity supply at the Site for the installation of the Equipment at such points and with such connections as specified by the Supplier or its Agents or Sub-Contractors. In most cases this is a 13amp non-switched fused spur. Unless otherwise agreed, this power supply is to be provided by the Customer. The Company shall not be responsible for interruption or failure of the Services caused by a failure of such power supply. The Customer will at the Customer's own expense:

- 2.5.1 obtain all necessary consents, including consents for any necessary alterations to buildings;
- 2.5.2 take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as the Supplier or its Agents or Sub-Contractors or advisers deem are necessary, and carry out afterwards any making good or decorator's work required and provide any electricity and connection points required by the Supplier, its Agents or Sub-Contractors.

These provisions must be completed to the Supplier's satisfaction in advance of any installation work and the Customer agrees to fully indemnify and hold the Supplier harmless against any claims, actions, proceedings, losses, damages, costs, out of pocket expenses imposed by any third party as a result of the Customer's failure.

## **3. USE OF SERVICES**

- 3.1 The Customer will use the Services in accordance with the provisions of this Agreement and the Schedules to this Agreement and comply with the processes, procedures and requirements set out in the Supplier's relevant user-guides or other written instructions for the Services (as may be provided to the Customer by the Supplier from time to time) and all other reasonable instructions as may be notified by the Supplier to the Customer from time to time and in accordance with the relevant provisions of the Act and all other applicable laws and regulations.
- 3.2 The Customer must not use a Service or allow or permit any End User to use the Service.:
  - 3.2.1 in a way that does not comply with the terms of any legislation or any codes of practice, statements of application, regulations or any licence or authorisation applicable to the Customer or End User (as appropriate) including without limitation the Communications Act 2003, any rules laid down by OFCOM and PhonepayPlus from time to time or that is in any way unlawful or fraudulent or to the knowledge of the Customer or End User has any unlawful or fraudulent purpose or effect;
  - 3.2.2 in connection with (without prejudice to the generality of clause 3.2.1 above) the carrying out of fraud or a criminal offence against any public telecommunications operator;
  - 3.2.3 in any way that constitutes Artificial Inflation of Traffic;

- 3.2.4 in a way that in the Supplier's reasonable opinion could materially affect the quality of any telecommunications service or other service provided by the Supplier or any third party;
- 3.2.5 to make nuisance calls or spam, to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
- 3.2.6 for storing, reproducing, transmitting, communicating or receiving any offending material;
- 3.2.7 deliberately, knowingly or recklessly transmit or distribute a virus;
- 3.2.8 to hack into or disrupt any aspect of the Supplier's Inbound Service or the Portal;
- 3.2.9 to obtain unauthorised access to any computer or service, or to circumvent, or attempt to seek to circumvent, any of the security safeguards of the Supplier's Inbound Service, its Website, the Portal or the Network or any of our suppliers' services, websites, portals or networks.
- 3.2.10 fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement;
- 3.2.11 contrary to instructions that the Supplier may give to the Customer;
- 3.2.12 to obtain access, through whatever means, to notified restricted areas of the underlying network;
- 3.2.13 to send and receive data in such a way or in such amount so as to adversely affect the Network (or any part of it) which underpins any of the Services or to adversely affect any other customers of the Supplier or of any its suppliers;
- 3.2.14 in any way which is unlawful, facilitates illegal activity, promotes unlawful violence, harmful, defamatory, obscene, infringing, racially or ethnically offensive, discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or causes any damage or injury to any person or property;
- 3.2.15 to engage in conduct which amounts to improper or persistent misuse of a public telecommunications network or service within the meaning of sections 127 to 128 of the Act; or
- 3.2.16 in a way which (in the reasonable opinion of the Supplier) brings the name of the Supplier into disrepute, or which places the Supplier in breach of the Act
- 3.2.17 in a way which transmits, distributes or stores any material in violation of any applicable law or regulation or any codes of practice, statements of application, or any licence or other authorisation. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorisation, and material that is obscene, defamatory, constitutes an illegal threat or violates export control laws.

#### 4. OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer undertakes to provide the Customer Equipment, ensure it is kept in good working order and undertakes that all Customer Equipment and any other equipment which is attached (directly or indirectly) to the Services will conform to the the relevant standard designated by all relevant legislation and all applicable regulations, instructions and orders including without limitation under the Act or the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and any requirements or standards set out by the Supplier. The Supplier shall not be under any obligation to connect or keep connected any Customer Equipment if it does not so conform of if in the Supplier's reasonable opinion it is liable to cause death, personal injury or damage to property or to impair the quality of the Service or put the Supplier in breach of its licences or obligations to any third party.
- 4.2 The Customer shall not use the Supplier's name or any registered or unregistered trade marks or service marks of the Supplier without the prior written consent of the Supplier. If the Supplier does give such written consent, the Customer shall first submit to the Supplier for prior written approval copies of all marketing and advertising materials and other documentation (including, where applicable, contractual documentation) involving the Supplier's name, registered or unregistered trade marks or service marks of the Supplier which the Customer proposes to use, prior to the use of any such materials or entering into any such contractual documentation.
- 4.3 The Customer shall not at any time make any statements or representations to third parties with regard to the Supplier or in any way hold itself out as acting for or on behalf of the Supplier.
- 4.4 The Customer shall notify the Supplier promptly of all enquiries or problems regarding technical and operational issues with the Services.
- 4.5 In the event that the Customer becomes aware by any means, or has reasonable suspicions that a fraud or serious illegal misuse may have taken place, or will take place, the Customer shall be under an obligation to take immediate steps to suspend service to the number concerned by contacting the Supplier's technical support department. The Supplier shall ensure that no further traffic is permitted on the relevant lines until service is re-instated at the request of the Customer. The Supplier shall not be responsible for any Charges or liabilities incurred by the Customer prior to such suspension.
- 4.6 The Customer shall use reasonable skill and care in the performance of its obligations under this Agreement and shall keep complete and accurate records in relation to the performance of such obligations.
- 4.7 The Customer shall ensure that its systems comply with the relevant specifications provided by the Supplier from time to time.
- 4.8 The Customer shall obtain and shall maintain at its own cost all necessary licences, consents, permissions necessary for the Supplier and its Sub-Contractors and Agents to properly perform their obligations under this Agreement including without limitation in relation to the Services and the Equipment and Customer Equipment.
- 4.9 The Customer shall ensure that the End Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any End User's breach of this Agreement.
- 4.10 The Customer shall comply fully with the provisions of all or any of the Schedules within this Agreement.
- 4.11 The Customer shall only use the Equipment in order to receive the Services. The Customer shall at its own expense provide suitable accommodation, assistance, facilities and environmental conditions for the Equipment and Customer Equipment and all necessary electrical and other installations and fittings.

- 4.12 The Customer shall ensure that a secure electricity supply at the Site for the operation and maintenance of the Equipment and Customer Equipment at such points and with such connections as has been specified by the Supplier or its Agents or Sub-Contractors is maintained. The Company shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.
- 4.13 The Customer is responsible for the Equipment and must not add to, modify or in any way interfere with it nor allow anyone else (other than someone authorised by the Supplier) to do so pursuant to the provisions of clause 5.2.2. The Customer will be liable to the Company for any loss of or damage to the Equipment, except where such loss or damage is due to fair wear and tear or is caused by the Supplier, or anyone acting on the Supplier's behalf.
- 4.14 The Customer shall ensure that any Customer Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment and that any Customer Equipment or other equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards.
- 4.15 To enable the Supplier to carry out its obligations under this Agreement, the Customer will at all reasonable times provide the Supplier's employees, and anyone acting on the Supplier's behalf including the Supplier's suppliers and Agents and Sub-Contractors, who produce a valid identity card, with access to any Site outside of the Company's control.
- 4.16 If through no fault of the Supplier, the Supplier is unable to carry out an installation or maintenance at, or gain access to, the Site and the installation or maintenance is aborted, the Supplier will notify the Customer Nominated Contact and may raise an additional charge pursuant to clause 7.2.
- 4.17 The Customer hereby irrevocably gives permission (so far as it is in within its power to do so) to the Supplier or its suppliers and Carriers and its employees, Agents or Sub-contractors to:
- 4.17.1 execute any works on the Site for, or in connection with, the installation, maintenance, or removal of the Equipment;
  - 4.17.2 keep and operate telecommunication apparatus installed on, under or over the Site for the purposes of providing the Service;
  - 4.17.3 enter the Site to inspect any telecommunication apparatus kept on, the Site or elsewhere for the purposes of providing the Service.
- 4.18 Where this Agreement or the Service is terminated for any reason the Supplier or its suppliers and Carriers will be entitled to remove the Equipment installed there.
- 4.19 The Customer undertakes:
- 4.19.1 not to sell or attempt to sell the Equipment;
  - 4.19.2 not to remove any identification mark affixed to the Equipment showing that it is the property of the Supplier or such other third party supplier of such Equipment.
- 4.20 The Customer undertakes (if required in writing by the Supplier to do so) to obtain and maintain the following insurance in respect of the Customer Equipment:-
- 4.20.1 cover in an amount equal to the full replacement value of the Customer Equipment against fire, theft, accidental damage and all other risks; and
  - 4.20.2 public liability insurance with cover in an amount that is reasonably satisfactory to the Supplier and on request to provide the Supplier with certificates of cover in respect of the required insurance and evidence of payment of premiums.
- 4.21 If any Customer Equipment is required at the site of the Supplier, the Customer shall procure that the Customer Equipment is delivered immediately upon request of the Supplier and in good time for the Start Date. Where such Customer Equipment is located at a site of the Supplier's, the Customer will remain fully responsible for the risk to the Customer Equipment. The Customer shall also ensure a prompt removal of the Customer Equipment from the site of the Supplier on the termination of this Agreement. The Customer shall be solely responsible for transportation, installation and de-installation costs associated with the Customer Equipment.
- 4.22 The Supplier shall have a lien over any Customer Equipment at the site of the Supplier in order to secure all sums due and unpaid under this Agreement and the Customer will not be entitled to remove the Customer Equipment from the site of the Supplier unless and until the Supplier has received all such outstanding sums due to it and authorised its removal.
- 4.23 The Supplier reserves the right to relocate the Customer Equipment to an alternative site of the Supplier's on giving to the Customer reasonable notice.
- 4.24 The Customer shall indemnify the Supplier against any claims, proceedings or threatened proceedings from third parties and against any loss or damage, costs or expenses, suffered by the Supplier arising from its possession or use of the Customer Equipment or from the location of the Customer Equipment at the site of the Supplier and for all costs and expenses reasonably incurred by the Supplier in investigating and defending itself in relation to any such claims, proceedings or threatened proceedings.

## 5. SERVICES

- 5.1 Telephone Numbers, Codes and Directories, IP Addresses
- 5.1.1. Where the Supplier allocates telephone numbers and/or IP addresses to the Customer, the Customer will not acquire any rights whatsoever in such telephone numbers or IP address. The Customer will not apply for registration of the telephone numbers or IP address as part of a trademark.
  - 5.1.2. Where Number Portability is required to provide the Service to the Customer, the Start Date is dependent on the actions of third parties and/or events outside the Supplier's control. In these situations the Supplier will use reasonable endeavours to supply the Service within the normal connection timescales of competent telecommunications service providers however the Customer acknowledges that delivery of the Services may be dependant on such aforesaid factors and that the Supplier cannot be held liable or accept any responsibility for faults or

delays or interruptions in being able to provide Number Portability.

5.1.3. The Supplier does not accept any liability for claims, losses, damages, expenses and costs relating to the Customer's inability to use or to continue use of a particular telephone number.

## 5.2 Faults and Maintenance and Alterations

5.2.1 Upon notification of a fault, the Supplier shall use its reasonable endeavours, during the Supplier's Normal Business Hours to promptly attend to such fault PROVIDED THAT the fault has arisen from normal use of the Equipment or Service.

5.2.2 The Customer agrees not to carry out or procure the execution of any alterations, modifications, replacements, extensions, attachments, disconnection or re-connection and any other additions or otherwise to any of the Equipment or the Services which may have been installed except with the prior written consent of the Supplier, which consent will not be unreasonably withheld. Any alterations or changes as aforesaid will, if appropriate, be executed by the Supplier or an appointed Sub-Contractor at the expense of the Customer

## 6. DURATION AND TERMINATION

6.1 The Agreement unless, otherwise terminated in accordance with the provisions of clause 6, shall commence on the Start Date and shall continue for a Minimum Term and thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period) unless:-

6.1.1 Either party terminates this agreement by providing notification in writing to the other party, no less than 60 Business Days before the end of the Minimum Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Minimum Term or Renewal Period; or

6.1.2 it is otherwise terminated in accordance with the provisions of this Agreement.

6.2 The Agreement applies to all the Services provided to the Customer by the Supplier.

6.3 Without prejudice to any other rights or remedies of the Supplier and where applicable having regard to the provisions of clause 8.6, the Supplier may terminate this Agreement or terminate or suspend any of the Services to be provided under this Agreement with immediate effect if:-

6.3.1 the Customer fails to pay all or any Charges by the due date.

6.3.2 the Customer fails to provide a deposit pursuant to the provisions of clause 9.1; or

6.3.3 the Customer's existing telecommunications service provider or BT has validly refused the Customer's application to cancel the Customer's existing contract with such provider; or

6.3.4 the Customer uses the Lines or Service in any way which the Supplier considers at its absolute discretion, to be inappropriate, illegal, fraudulent or improper; or

6.3.5 the Supplier is informed by its suppliers or Carriers supporting the Service that its suppliers and/or Carriers are required to cease the Service by a competent regulatory authority; or

6.3.6 the Supplier's suppliers and Carriers supporting the Service cease its provision of telecommunications services to the Supplier that the Supplier uses for the Service or materially change the terms upon which it will provide its services to the Supplier in circumstances that are beyond the reasonable control of the Supplier.

6.4 Either party may terminate the Agreement without liability to the other:-

6.4.1 if the other party commits a material breach of any of the terms of this Agreement; or

6.4.2 if an order is made or a resolution is passed or a petition is presented for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding up order in relation to the other party; or

6.4.3 if in the event that an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party of its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or a manager, receiver or administrative receiver is appointed over any of the other party's assets or undertaking, or if circumstances arise which entitled a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets, or the other party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way (otherwise than for the purposes of a solvent re-construction or amalgamation); or

6.4.4 if the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt or, if the other party has a reasonable reason to believe debts will not be paid when due; or

6.4.5 if there is a change of control of the Customer within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or

6.4.6 if the other party ceases or threatens to cease, to trade; or

6.4.7 if the Supplier ceases to be authorised to provide the Services under the Act or is obliged directly or indirectly to terminate this Agreement in order to comply with an order, instruction or request of the Government or a governmental body, an emergency services organisation, a court of law, a legal body, a tribunal or other competent administrative or regulatory body, including without limitation the Network Operator, ICSTIS, OFCOM and PhonepayPlus.

6.5 Following termination of this Agreement for any reason and without prejudice to any rights or remedies available to the Supplier, the Customer shall:-

6.5.1 pay to the Supplier on demand all arrears of Charges due up to the date of termination under this Agreement or as a result of termination of this Agreement; and

- 6.5.2 return and make no further use of the Equipment. If the Equipment is not returned to the Supplier, the Supplier reserves the right to make a further late delivery charge to the Customer which the Customer agrees to pay of £100. This clause shall continue to be binding on the Customer notwithstanding termination of this Agreement.
- 6.6 Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination, and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination.
- 6.7 In the event that the Customer seeks to terminate the Contract for any reason other than permitted by virtue of the provisions in this clause whether before or after the Start Date, the Supplier shall at its sole discretion be entitled to accept such termination provided that it shall be entitled to:-
- 6.7.1 charge and the Customer agrees to pay, without offset, a termination fee equivalent to 50% of the Customer's average monthly Charges multiplied by the number of whole or part months remaining of the Minimum Term or the Renewal Period whichever is applicable; and
- 6.7.2 charge and the Customer agrees to pay, a cancellation charge equivalent to the remaining Rental of the Minimum Term or the Renewal Period whichever is applicable.
- 6.8 In the event that the Supplier terminates this Agreement in accordance with the provisions of clause 6.3 or the provisions of any Schedule or the Customer seeks to terminate and the Supplier accepts such termination in accordance with the provisions of clause 6.7 or the provisions of any Schedule, the Customer shall pay in addition to the costs referred to in clause 6.7 or the relevant provisions of any Schedule (if applicable) whichever is the greater, pay to the Supplier the Early Termination Fee.

## **7. CHARGES AND PAYMENTS**

- 7.1 The Customer shall pay to the Supplier all Charges and other sums due under this Agreement without set off, deduction or counterclaim.
- 7.2 The Supplier may amend its Prices upon which Charges are based at any time during the Term by not less than thirty (30) days notice in writing to the Customer, such Prices to be published on the Website. The Supplier will only amend the Charges payable by you for valid reasons, such as an increase or decrease in tariff access rates, tariffs for international fixed and mobile telephone calls termination or other new charges or changes in charges levied on the Supplier by the Network Operator or any other supplier of the Supplier, as a result of changing regulatory or legal requirements, market conditions, changes in technology or our systems capabilities or which in the Supplier's opinion are commercially necessary to enable us to provide the Services to you. This includes the ability to separately make a charge for Services that were at the time the Customer entered into this Agreement included in the Service as free. In the event that any increase in the Charges for the Services is in excess of 10 % of that originally proposed for the same Services, then the Customer may serve notice to terminate this Agreement within (14) days of such notice of increase in the Charges. Notwithstanding the aforementioned the Supplier shall be entitled to increase the Charges for whatever reason at the start of each Renewal Period upon thirty (30) days' prior notice to the Customer, such particulars of the increase being given via the Companies Website. The Supplier may also make an additional charge (on the basis of additional charges detailed in the Supplier's Price List), on its own behalf or on behalf of our Network Operator or Carrier in the following circumstances:-
- 7.2.1 where an abortive visit has occurred as a result of incorrect information having been supplied by the Customer and as a result it was technically impractical to provide the Service over the Customers Access Connection at that visit an abortive visit charge may be incurred;
- 7.2.2 where it is necessary to relocate the existing telephone master socket to provide the Service and a further visit in order to attend this will be required an abortive visit charge may be incurred;
- 7.2.3 where the Supplier or its Agents or Sub-contractors are unable to gain access to the Site to carry out the installation or maintenance of the Service an abortive visit charge may be incurred;
- 7.2.4 where certain information on the Order which has been provided by the Customer is illegible, inaccurate or incomplete a rectification administration fee will be charged;
- 7.2.5 where the Supplier or its Agent or Sub-Contractor or Carrier provide support to the Customer outside Normal Business Hours an additional support fee will be charged;
- 7.2.6 where a fault relates to Customer Equipment or any other equipment other than the Equipment an other equipment repair charge will be charged;
- 7.2.7 where the Customer changes its Site and it requires a re-installation of the Services at the new Site a re-installation fee will be charged. If the Supplier is unable to provide any or all of the Service to the Customer's new Site, then in respect of the Service that cannot be transferred the provisions of clause 6.8 above will apply.
- 7.3 All amounts payable to the Supplier in respect of the Services are quoted exclusive of Value Added Tax or any other applicable taxes which may from time to time be levied and such Value Added Tax and any other such applicable taxes shall be itemised separately on all invoices and bills and be payable by the Customer in addition to, and at the same time as, any Charges.
- 7.4 The Supplier may in a separate invoice make claims for any Backdated Charges. Any such Backdated Charges must be made within six months of the date that the Backdated Charges arose.
- 7.5 The Supplier shall be entitled to levy a monthly rental fee for any Equipment provided by the Supplier, as agreed with the Customer.
- 7.6 The Supplier shall be entitled to levy the Installation Costs for any Equipment or the Services as outlined in the Service Order.

## **8. PAYMENT OF CHARGES**

- 8.1 Except where stated, the Supplier shall invoice the Customer each calendar month for Services and any other sums due for the prior calendar month under this Agreement.
- 8.2 Except where stated otherwise, the Supplier shall invoice the Customer in advance for all Rental charges due under this Agreement.
- 8.3 Except where stated otherwise, the Supplier shall invoice the Customer upon activation of the Service for all Installation Costs, any one off charges as referred to in the Order and any Equipment charges due under this Agreement.

- 8.4 All payment is due seven (7) days after the date of the relevant invoice, and shall unless agreed in accordance with the provisions of clause 8.8 be paid by direct debit into the Supplier's nominated bank account from time to time. Time shall be of the essence in respect of such payments and payment shall be deemed to have been made at the time when cleared funds are available in the Supplier's bank account.
- 8.5 Charges shall accrue from the Start Date.
- 8.6 Where the Supplier has previously expressly agreed in writing with the Customer, the Supplier will allow the Customer to accumulate unpaid Charges up to a maximum of an agreed credit limit which the Customer agrees in writing with the Supplier. In the event that at any time unpaid Charges exceed the credit limit the Supplier shall be entitled, at its option, to:
- 8.6.1 suspend provision of the Services on written notice with immediate effect; and/or
  - 8.6.2 request an immediate payment on account by the Customer; and/or
  - 8.6.3 issue an interim invoice.
- Any interim invoice issued under this clause shall be payable by the Customer within seven (7) days of the date of issue. Should the Customer fail to pay an interim invoice when due or make any payment on account agreed with the Supplier within seven (7) days of being requested to do so by the Supplier, the Supplier will be entitled to suspend the Services without notice until such time as payment is made in full.
- 8.7 In the event of the Supplier disconnecting the Services as a result of non-payment of any of the Charges and/or any other sums due or as a result of any other of breaches by the Customer under this Agreement, a further charge of £50.00 plus Value Added Tax will be added to the Customer's account for administration purposes.
- 8.8 All payments in respect of the Charges and/or any other sums due under this Agreement will be made by direct debit only unless the Customer has the express written prior agreement of the Supplier to pay by an alternative method. Any payments by any other method will incur an administration fee of £15 per payment. If a direct debit payment is dishonoured or cancelled the Supplier will be entitled to pass on to the Customer an administration fee of £50 plus any additional third party charges incurred by the Supplier. The Supplier will also be entitled to charge the Customer a monthly administration fee of £50 for each month in which Customer's direct debit is dishonoured or not re-instated following cancellation.
- 8.9 The Supplier may charge interest on all overdue amounts from time to time on a daily basis at a rate of five percent (5%) per annum above the base lending rate of Barclays Bank Plc from time to time, to run from the due date of payment until receipt by the Supplier of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.
- 8.10 The Supplier may at any time review and/or adjust the amount payable by the Customer by direct debit to ensure that it is sufficient to cover the Charges and you irrevocably authorise us to change your direct debit instruction accordingly.
- 8.11 The Customer shall be responsible for paying all Charges incurred during any such period of suspension (including without limitation in relation to Charges in respect of Rental).

## 9. DEPOSIT AND SECURITY

- 9.1 The Supplier reserves the right at its option to require a deposit or guarantee or such other security from the Customer as may be acceptable to the Supplier for an amount to be determined by the Supplier (the "deposit") prior to the provision of any Service including without limitation in the event:-
- 9.1.1 that the Customer is in material breach of this Agreement; and/or
  - 9.1.2 that there is in the opinion of the Supplier a significant change in the financial circumstances of the Customer which the Supplier considers may have a material adverse effect on the Supplier; and/or
  - 9.1.3 that there is a re-commencement of the Services by the Supplier following a suspension or termination of the Services in accordance with this Agreement.
- 9.2 Details of the deposit, where applicable, will be notified to the Customer separately by the Supplier.
- 9.3 Deposits are payable on request and do not bear interest. If a deposit is not paid when requested we may suspend the provision of the Service until such time as the deposit is paid.
- 9.4 The Supplier shall be entitled to apply all or any of the amount of the deposit against:
- 9.4.1 any unpaid Charges (including those already invoice, those in respect of interim invoices and those in respect of future invoices to be rendered in respect of Charges that have been incurred but unbilled); or
  - 9.4.2 any other liability incurred by the Customer to the Supplier whether under this Agreement or otherwise.

## 10. SUSPENSION OF SERVICES

- 10.1 The Supplier may (without prejudice to its other rights under this Agreement) and without liability to the Customer, suspend the provision of the Services and the performance of its obligations under this Agreement in whole or in part with immediate effect and the Customer will remain liable for all Charges accrued during such period of suspension) if:-
- 10.1.1 the Supplier is obliged to do so directly or indirectly in order to comply with an order, instruction or request of the Government or any governmental body, an emergency services organisation, a court of law, a legal body, tribunal or other competent administrative or regulatory body, including without limitation OFCOM and PhonepayPlus or the Network Operator or ICSTIS;
  - 10.1.2 the Supplier needs to carry out work relating to the upgrading or maintenance of the Network (provided that the Supplier has given the Customer as much notice which in the Supplier's reasonable opinion is reasonably practicable in the circumstances provided that such suspension of the Services does not extend beyond that which is reasonably necessary to carry out the work.) The Customer shall not be liable for any Charges for any period by which the suspension of the Services under this Clause 10.1.2 extends beyond that which is reasonably necessary under the circumstances.

- 10.1.3 the Customer does not pay any sum due and owing to the Supplier;
  - 10.1.4 the Customer is in breach of any of the material terms of this Agreement;
  - 10.1.5 for operational reasons or in case of emergency;
  - 10.1.6 where unpaid Charges exceed the credit limit agreed with the Supplier pursuant to this Agreement;
  - 10.1.7 the Customer acts in such a way or permits anything to be done which, in the reasonable opinion of the Supplier, relates to the Services and may impair or jeopardise the operation of the Services or any part of the Network;
  - 10.1.8 the Supplier reasonably suspects or believes that the Customer is in breach of this contract or the Services are being used for unlawful, fraudulent or improper purposes.; or
  - 10.1.9 the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security following a request by the Supplier in accordance with this Agreement.
- 10.2 In the event of suspension of the Services all sums invoiced to the Customer by the Supplier shall become immediately payable.
- 10.3 The Customer shall indemnify the Supplier for all losses, damages, costs and expenses incurred as a result of the suspension and any re-commencement or variation of the Service where the suspension or variation is implemented as a result of any act or omission of the Customer.

## 11. INDEMNITIES

- 11.1 The Customer will indemnify, defend and hold harmless the Supplier from and against any liabilities, actions, losses, damages, judgments, costs, claims or expenses or legal proceedings (including without limitation court costs and reasonable legal fees) which are brought or threatened against the Supplier by any third party, End User or the Customer and/or arising out of or in connection with the Customer's or End User's use of the Services including without limitation in the event of:
- 11.1.1 a Service being or having been used in breach of this agreement except where such breach results from fraud on the part of the Supplier;
  - 11.1.2 the Customer being or having been in breach of any of the provisions of these terms and conditions or any other written instruction by the Supplier;
  - 11.1.3 the failure of the Customer to use the Services as a result of delays, failures in repairing any faults to the Equipment or Network or any other problems inherent in the use of such communication facilities whether or not caused by the Supplier, its Network Operators or any other service providers;
  - 11.1.4 any fraud on the part of the Customer or any End User or Artificial Inflation of Traffic.,

## 12. WARRANTIES

- 12.1 Each party warrants to the other party (such warranties being deemed to be repeated on each and every day during the term of this Agreement) that:
- 12.1.1 it has the unimpaired right and authority to enter into this Agreement which shall constitute a binding obligation on it; and
  - 12.1.2 it will comply with its respective obligations under applicable Data Protection Legislation and will obtain and maintain all relevant registrations, notifications and consents, including (in relation to the Customer) such registrations, notifications and consents as the Customer shall obtain and maintain to enable the Supplier and its suppliers and Sub-contractors to process the personal data of Customers for the purposes of the performance by the Supplier of its obligations under this Agreement. This clause shall survive termination or expiry of this Agreement.
- 12.2 The Supplier warrants (such warranty being deemed to be repeated on each and every day during the term of this Agreement) that all such licences, authorisations, approvals and consents as are necessary to enable the Supplier to legally provide the Services as envisaged by this Agreement have been obtained and/or will be maintained prior to the Start Date and kept up to date and it has the unimpaired right to supply the Services.
- 12.3 The Customer warrants (such warranty being deemed to be repeated on each and every day during the term of this Agreement) that all such licences, authorisations, approvals and consents as are necessary to enable the Customer to legally receive the Services as envisaged by this Agreement have been obtained and/or will be maintained prior to the Start Date and kept up to date and it has the unimpaired right to receive the Services.
- 12.4 The service will be provided without warranty or representation of any kind, whether express or implied the Company disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the Service is free of defects, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. The Customer accepts all risks and liabilities associated with the use of the Service.
- 12.5 You acknowledge that the provision of ADSL services and our ability to provide the Service is dependent on British Telecom plc, and its ability to provide certain parts of the Service to us.
- 12.6 We cannot warrant that the Service will be free of interruption or that transmission of information through the Service will be secure. It is entirely your responsibility to ensure that Customer Equipment or any other equipment is correctly configured and capable of receiving our Services.

## 13. LIMITATION OF LIABILITY

- 13.1 This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, Agents, and Sub-contractors) to the Customer in respect of:-
- 13.1.1 Any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this Agreement;
  - 13.1.2 Any use made by the Customer of the Services or any part of them; and
  - 13.1.3 Any breach of this Agreement.
- 13.2 Except as expressly and specifically provided in this Agreement:-

- 13.2.1 the Supplier makes no warranties, guarantees, terms or representations as to the fitness or quality of the Service, except as expressly stated in this Contract;
- 13.2.2 all conditions, warranties, terms, representations, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are to the fullest extent permitted by law hereby wholly excluded; and
- 13.2.3 the Services are provided to the Customer on an “as is” basis.
- 13.3 Each of the provisions in this Clause operates separately. If any provision is disallowed or found to be ineffective by any competent body, the other provisions will continue to apply.
- 13.4 Nothing in this Agreement shall exclude or restrict the Supplier’s liability for death or personal injury resulting from the negligence of the Supplier or its employees while acting in the course of their employment or for fraud or fraudulent misrepresentation.
- 13.5 Subject to the exclusion in clause 13.10 the Supplier shall be liable for damage to the physical property of the Customer or the property of any of its customers caused by any negligent act or omission of the Supplier or its employees while acting in the course of their employment PROVIDED THAT such liability of the Supplier shall be limited to 50% of the Charges (exclusive of VAT) invoiced and collected by the Supplier from the Customer in the 12 month period prior to the relevant incident or incidents (or in the period from the Start Date to the date of the relevant incident or incidents, if shorter than 12 months).
- 13.6 Subject to clause 13.2 and 13.4:-
  - 13.6.1 the Supplier shall not be liable to the Customer or any Customer in contract, tort including any liability for negligence or breach of statutory duty, misrepresentation, restitution or otherwise for any loss of revenue, business, depletion of goodwill, time, opportunity, data, anticipated savings or profits and/or similar losses or for any indirect or consequential loss, costs, damages or expenses howsoever arising under this Agreement; and.
  - 13.6.2 the maximum aggregate liability of the Supplier in contract, tort (including any liability for negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of, or in connection with, this Agreement shall be limited in respect of any one event or series of two or more related events with respect to related facts and circumstances to an amount equal to £5,000 and shall be limited with respect to the aggregate of all claims arising out of, or in connection with this Agreement to £20,000.
- 13.7 The provisions of this clause 13 shall continue to apply notwithstanding termination of this Agreement.
- 13.8 The Supplier excludes all liability for the accuracy of the data or material that the Supplier provides or that is provided by a third party or by its agents or contractors and the Supplier shall have no liability for any damage caused by errors or omissions in the information or instructions.
- 13.9 Each of the Supplier and the Customer acknowledges that it considers the provisions of this Clause 13 to be reasonable, taking account of the other terms of this Agreement (including the Charges) and its ability to insure against losses which may arise from any breach by the other party of its obligations under this Agreement.
- 13.10 The Supplier shall not be liable in any circumstances for making good the Customer’s premises in the event of the removal of the Equipment.

#### 14. NOTICES

- 14.1 Any demand, notice or other communication given or made under or in connection with this Agreement by either party will be in writing and will be delivered by the method referred to in clause 14.2 unless otherwise agreed between the Customer and the Supplier to the address of the Customer in the Order (or such other address as the Customer shall notify the Supplier pursuant to this clause) and in the case of the Supplier to the address as stated on the company website at {www.acuitynetworks.co.uk}
- 14.2 Any such demand, notice or other communication (other than normal operating requirements which may be sent by email) will be sent to the recipient at the address given in this Agreement, or to such other address as notified in writing from time to time, and will be deemed to have been duly given or made as follows:-
  - 14.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting;
  - 14.2.2 if delivered by hand upon delivery, unless such delivery occurs on a day which is not a Business Day or after 4.00pm on a Business Day, in which case it will be deemed to have been given or made at 9.00am on the next Business Day; or
  - 14.2.3 if sent by facsimile, on completion of transmission provided that where transmission occurs after 4.00pm on a Business Day or on a day which is not a Business Day, in which case it will be deemed to have been given or made at 9.00am on the next Business Day.
- 14.3 The facsimile number for the purpose of clause 14.2.4 of Acuity Networks Ltd for the purpose of clause 14.2.3 is:  
Acuity Networks Limited  
Fax number: +44 (0) 333 344 0802  
For the attention of: Customer Operations Manager

#### 15. USE OF THE SERVICE - GENERAL OBLIGATIONS

- 15.1 The Customer shall report any fault to the Supplier’s Customer Services Department, where it will be dealt with in accordance with the Acuity fault repair service and in line with a competent telecommunications operator offering such services in the United Kingdom provided that the fault has arisen from normal use of the Equipment or Service. Where no Equipment is installed, the Supplier may request that the Customer first have its designated maintainer check the Customer’s equipment.
- 15.2 If the Supplier agrees to fix a fault that is caused by the Customer or that otherwise falls outside the responsibility of the Supplier or where no fault is found, the Supplier may charge the Customer for any work that the Supplier has undertaken at its applicable man-hour rate particulars of which are available on the Price List.

- 15.3 The Customer agrees not to use or refer to the name of the Supplier in any article, announcement or published literature without the express written consent of the Supplier.
- 15.4 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement or from carrying on its business, by acts or events, omissions or accidents including without limitation where such breach or failure or delay was the result of default of suppliers or Sub-contractors, or other telecommunications service providers, any act of God, insurrection or civil disorder, war or military operations, acts of terrorism, inclement weather, failure or shortage of power supplies or any other utility service, flood, drought, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government or regulatory body, compliance with any statutory obligation, industrial disputes of any kind (whether involving the workforce of the Supplier or any other party), the acts or omissions or failures of Network Operators or BT or any telecommunications network, any other cause beyond that party's reasonable control.
- 15.5 Nothing in this Agreement shall create a partnership or joint venture between the parties or constitute any party being the partner, agent or legal representative of the other.
- 15.6 Failure by the Supplier to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

## 16. CONFIDENTIAL DATA

- 16.1 Each party shall use the Confidential Information disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information disclosed to it except in confidence to those of its employees, officers and professional advisers who need to have access to it for the proper performance of its duties under the Agreement.
- 16.2 The provisions of Clause 16.1 shall not apply to Confidential Information that:
  - 16.2.1 the receiving party can prove was known to the receiving party or in its possession before that information was disclosed to it; or
  - 16.2.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf;
  - 16.2.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence;
  - 16.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body.
  - 16.2.5 This clause 16 shall survive the termination or expiry of this Agreement.

## 17. CLI AND DATA PROTECTION

- 17.1 If the Supplier processes any personal data on the Customer's behalf when providing the Services, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:-
  - (a) The Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Economic Area or the country where the Customer and the End Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;
  - (b) The Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
  - (c) The Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - (d) The Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - (e) Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental, loss, damage or destruction.
- 17.2 The use of any information, including CLI, may be subject to (and therefore the Customer shall comply with) the Data Protection Act 1998, EU Data Protection Directives and The Telecommunications (Data Protection and Privacy) Regulations 1999. The Supplier reserves the right to withhold CLI if it believes that the Customer has failed to comply with this Clause or the Supplier receives a complaint from any relevant authority.
- 17.3 The Supplier and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable the Supplier to process personal data pursuant to clause 17.1 in connection with the performance by the Supplier of its obligations under this Agreement.
- 17.4 The Customer agrees that the Supplier may put their name and other details obtained from the Order Form into a computerised directory for internal use and to enable the Supplier to provide the Service.
- 17.5 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing and payment of the appropriate fee.

## 18. OWNERSHIP OF IPR and EQUIPMENT

- 18.1. All IPR relating to the subject matter of this Agreement, and ownership of the Equipment and the Network (including any works performed by the Supplier to connect the Site to the Network) shall remain with the Supplier or its licensors, as appropriate. No title or IPR therein or in any modification or extension thereof shall pass to the Customer in any circumstances whatsoever unless specifically stated under the Agreement. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Supplier or its licensors or the Equipment or the Network as a result of using the Service, except as expressly set out in this Agreement. This Clause shall survive termination or expiry of the Agreement.

- 18.2. The Customer acknowledges such title, interest and rights and the Customer shall not take any action to jeopardize, limit or interfere in any manner with the Supplier's (or any third party suppliers') title, interests or rights with respect to the Service or the Equipment, including but not limited to, using the Supplier's or our suppliers and carriers trademarks or trade names.
- 18.3. Where software is provided, including IP addresses, to enable the Customer or to use the Service, the Supplier grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferable license to use the software for that purpose.

## 19. VARIATION

- 19.1. In addition to the rights referred to at clause 7.2, the Supplier has the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting the Supplier's business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in the Supplier's system's capabilities.
- 19.2. The Customer will be subject to any change in the terms and conditions notified to you from time to time, at the time that the Customer's contract is next renewed, unless any change to these terms and conditions is required to be made by law or governmental authority or in accordance with or clause 1.11 or clause 7.2 (in which case it will apply immediately). If we notify you of a change to these terms and conditions that is intended to apply to you immediately, the Supplier has the right to assume that you have accepted the change to the terms and conditions, unless you notify us that the change is not acceptable and that you wish to terminate this Agreement in accordance with clause 6.8 or with effect from the end of the Minimum Term/Renewal Period whichever is applicable. For the avoidance of doubt where the Customer has served notice to terminate this Agreement as aforementioned, the new changes to the terms and conditions will apply to the Customer for the remainder of the Term.

## 20. USE OF PERSONAL INFORMATION

- 20.1. We or our Agents and/or Sub-Contractors may use the information that you provide us with or that we hold about you to
  - 20.1.1. identify you when you contact us;
  - 20.1.2. administer your account;
  - 20.1.3. prevent and detect fraud or loss;
  - 20.1.4. carry out customer profiling and marketing analysis;
  - 20.1.5. contact you, about the other services and products we can provide.
- 20.2. We may disclose your information that we hold about you to licensed credit reference agencies and other organisations to help make credit decisions for debt and fraud prevention purposes. We and the credit agency may retain a record of the credit checks carried out.
- 20.3. We may disclose your information to third parties for the purpose of providing the Services that you have requested, or for legal or regulatory reasons.
- 20.4. Except as set out above, we will not disclose your information to third parties. If you want to contact us about our use of your information, please write to Acuity Networks Limited Customer Services Department at the Company's offices as detailed on your order for Service.

## 21. GENERAL

- 21.1. Headings in this Agreement shall not affect interpretation.
- 21.2. Where an Order covers more than one telephone Number each Number shall be deemed the subject of a separate and severable Agreement.
- 21.3. The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it.
- 21.4. The termination or expiry of this Agreement shall be without prejudice to the rights of either party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.
- 21.5. Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 21.6. The Supplier does not support Wholesale Line Rental (WLR) or LineSave without the Carrier Pre-Selection (CPS) or CallSave or Least Cost Routing (LCR) service also being supplied on the line. These Services and calls to be routed exclusively by the Supplier.
- 21.7. This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself trustee of the rights under it for the benefit of any third party.
- 21.8. These terms and conditions shall apply in respect of each Service in addition to the special terms relating to such Service in the relevant Schedule if applicable. Where there is any conflict, the provisions of the Schedule will prevail.
- 21.9. The Customer shall indemnify and keep indemnified the Supplier against all or any claims and associated costs, damages or expenses made by any third party as a consequence of any breach by or other act or omission of the Customer under or in relation to this Agreement.
- 21.10. If your Order is for the LineSave or WLR Service, it is your responsibility to ensure that any monitored alarm system (MAS) you use is compatible with the Service. If we suspend or end the Service, this will affect your MAS. We do not accept liability in connection with your use of a MAS with the Service.
- 21.11. The Supplier has an Acceptable Use Policy, which can be found on our Website or provided upon request, and the Customer accepts that the Supplier can suspend or terminate the Customer's access to the Website [or any Service] immediately if it believes that the Customer is using the Website or Service in a way that contravenes the Acceptable Use Policy.
- 21.12. Except as otherwise expressly permitted under this Agreement, the Customer may not:
  - 21.12.1. modify the Service without the Supplier's prior written consent;

21.12.2. redistribute copy or allow the use of the Service, by any third party;

21.12.3. disclose details of the Service, to any third party without the Supplier's prior written consent;

21.13 In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.]

## **22. ASSIGNMENT**

22.1 This Agreement may not be assigned in whole, or in part, by the Customer without the prior written consent of the Supplier, such consent not to be unreasonably withheld.

22.2 You agree not to transfer any of your rights or obligations under this Contract.

22.3 We may at our sole discretion assign, transfer, charge, sub-contract or deal in any other manner with some or all the rights or obligations within this Contract to another party.

## **23. JURISDICTION**

23.1 In the event that any provision of this Agreement is held to be void, illegal or unenforceable the relevant provision shall be deemed not to be or never to have been or formed a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

23.2 This Agreement shall be governed, construed and take effect in all respects in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this Agreement save that the Customer shall not object to the Supplier seeking enforcement of any resultant judgment in any court in any territory having jurisdiction over the Customer or its assets.

## **24. ENTIRE AGREEMENT**

24.1 This Agreement, the Schedule, the Order, the Price List and any other terms and conditions relating to the Services published from time to time at [www.acuitynetworks.co.uk] represents the entire Agreement and understanding of the parties in relation to the Contract. It may only be varied by the prior written agreement of the parties. This agreement supersedes all prior undertakings and representations, whether written or oral and this Agreement may only be modified if such modification is in writing and signed by the Company or any successor or assignee of the Company.

24.2 Each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty including without limitation on the Website or in any other literature or any other provision except as expressly written in this Agreement, and that its only remedy can be for breach of contract.