

Phone Line and Maintenance Agreement

**Customer Contract,
Pricing Schedule,
Equipment Schedule,
Service Schedule**

Background

- A The Customer wishes to purchase equipment and the Communications Service from FCC and FCC wishes to supply and install that equipment and supply the Communications Service, all subject to the terms of this Agreement.
- B The Customer also wishes FCC to provide maintenance services in relation to the Equipment supplied and installed.

THE PARTIES AGREE:

1 Definitions and interpretation

1.1 Definitions

- Act** means the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof;
- Access Fee** means the fee payable by the Customer to FCC for access to the Carrier Network;
- Additional charges** means charges which may be charged in addition to the Equipment Fee, Communications Fee and Maintenance Fee and as set out in the Pricing Schedule;
- Business Day** means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;
- Carrier Network** means BT or other network provider;
- Communications Fee** mean the fee chargeable by FCC to the Customer for the supply of the Communications Service and as detailed in the Pricing Schedule;
- Communications Service** means the provision of communications services including but not limited to Indirect Access, CPS and Wholesale Access, Voice and Data Refile, Geographic Number Translation Services, Fixed Lines, Calls, Hosted IP Telephone as detailed in the Services Schedule;
- Confidential Information** means any and all confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any associate, person, firm, or organisation associated with that party;
- Connection Date** means the date on which FCC connects the Customer to the Carrier Network and as set out in the Services Schedule;
- Delivery Date** means the date for the delivery of the Equipment identified as detailed in the Equipment Schedule;
- Delivery Point** means the location for the delivery of the Equipment as detailed in the Equipment Schedule;
- Early Termination Charges** means the balance of the Communications Fee and/or Maintenance Fee for the outstanding period of the Minimum Term as at the date of the notice of termination;

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Emergency Call	means a call to 999 or 112 and any other number associated with the UK emergency services;
Equipment	means the goods and related accessories, spare parts, software and documentation and other physical material set out in the Equipment Schedule and to be supplied by FCC to the Customer;
Equipment Fee	means the fee chargeable by FCC to the Customer for supply of the Equipment as detailed in the Pricing Schedule;
Excepted Service	means the services excluded from the Maintenance Service and as listed at clause 6.3;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;
Installation	means the physical installation of Equipment at the Installation Location;
Installation Location	means the location (including any additional Sites) for the installation of the Equipment identified as detailed in the Equipment Schedule;
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> (a) whether registered or not, (b) including any applications to protect or register such rights, (c) including all renewals and extensions of such rights or applications, (d) whether vested, contingent or future and (e) wherever existing;
Maintenance Fee	means the fee chargeable by FCC to the Customer for the supply of the Maintenance Service and as detailed in the Pricing Schedule;
Maintenance Services	means the adjustment, repair and/or replacement of defective components in the Equipment resulting from fair wear and tear and/or faulty workmanship of FCC and/or materials which in the opinion of FCC are necessary for the proper functioning of the Equipment and which is to be supplied by FCC to the Customer in accordance with the terms set out in Clause 6 and the Maintenance Schedule;
Normal Working Hours	means 9am to 5pm Monday to Friday;

- Site** means the Customer’s additional premises to that of the Installation Location at which the Equipment is to be installed and the Communication Service and/or the Maintenance Service is to be provided;
- Specification** means the specification for the Equipment agreed between the parties and set out in the Equipment Schedule;
- VAT** means United Kingdom value added tax and any other tax imposed in substitution for it;

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to subclauses, clauses, Schedules or Appendices (if any) are to subclauses, clauses, Schedules or Appendices, and references to paragraphs are to paragraphs in a Schedule or in an Appendix of this Agreement;
- 1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4 'including' (or similar words) means including without limitation;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;

2 Duration

- 2.1 This Agreement shall continue from the Commencement Date for a minimum period as outlined in the summary contract (the “Minimum Term”) and thereafter for further periods each equivalent to the Minimum Term until it is terminated:
 - 2.1.1 by either party giving the other not less than ninety calendar days written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate; or
 - 2.1.2 in accordance with clause 23 (Termination) of this Agreement.
- 2.2 In the event the Customer terminates this Agreement prior to the end of any Minimum Term (unless it is terminated in accordance clauses 2.1.1 or 23.1) FCC shall be entitled to invoice and charge the Customer:
 - 2.2.1 any Early Termination Charges;
 - 2.2.2 the balance outstanding on any Equipment Fee;
 - 2.2.3 where the equipment is leased from FCC by the Customer the replacement cost of the equipment where the Customer fails to return the equipment to FCC at all or undamaged and in good order (save for fair wear and tear) to FCC in accordance clause 23.3.3; and

2.2.4 any additional charges including but not limited to a disconnection fee or recovering charges which FCC have been charged by the Carrier Network as a result of the early termination

the Customer shall pay any such invoices in accordance clause 14.2.

3 Supply of Equipment

3.1 Customer engages FCC to supply the Equipment and FCC agrees to provide the Equipment in accordance with this Agreement.

3.2 FCC shall:

3.2.1 provide the Equipment to the Customer;

3.2.2 supply to the Customer in reasonable time before the Delivery Date such information and assistance as may be necessary to enable the Customer to prepare the Installation Location for the Equipment;

3.2.3 deliver the Equipment on the Delivery Date to the Delivery Point;

3.2.4 install the Equipment at the Installation Location on the Delivery Date; and

3.2.5 connect the Equipment to the Carrier Network.

3.3 Any installation date shall be an estimate only and FCC shall not be liable for any failure to meet such installation date.

3.4 FCC shall not be liable for any delay in or failure of performance caused by:

3.4.1 the Customer's failure to: (i) make the Installation Location available, (ii) prepare the Installation Location in accordance with FCC's instructions or (iii) provide FCC with adequate instructions for performance or delivery or otherwise relating to the Equipment;

3.4.2 Force Majeure

3.5 Equipment may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.

3.6 If the Customer fails to accept delivery of the Equipment on the Delivery Date:

3.6.1 delivery of the Equipment will be deemed to have occurred 28 Business Days following such date; and

3.6.2 FCC will store and insure the Equipment pending delivery, and the Customer will pay reasonable storage, insurance charges, costs and expenses incurred by FCC in doing so.

3.7 If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been delivered in accordance 3.6 then payment shall be made by the Customer to FCC of the balance of the Equipment Fee within seven days of such deemed delivery date.

3.8 FCC shall attempt to comply with the Customer's reasonable requests in respect of installation but FCC's decision on the routing of cables and wires and the positioning of outlets and Equipment shall be final.

3.9 The Customer must return to FCC a programming information sheet at least 7 days prior to the installation date. Without this installation may not be possible.

4 Acceptance

- 4.1 After FCC has installed the Equipment at the Site, FCC's engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days.

5 Communication Services

- 5.1 FCC shall provide the Communication Services to the Customer at the Installation Location in accordance with the Communications Services Schedule from the Connection Date.
- 5.2 FCC shall use all reasonable endeavours to provide the Communication Services in a reliable manner and in accordance with good industry practice.
- 5.3 FCC shall not be liable for any fault or loss of Communication Services arising as a result of incorrect information provided by the Customer to FCC
- 5.4 In the event of a fault in the provision of the Communication Service, the Customer must notify FCC as soon as it becomes aware of such a fault. FCC shall use reasonable endeavours to provide support to the Customer to resolve the fault as soon as possible. In the event such a fault is not as a result of the Equipment or provision of the Communication Services, FCC reserves the right to charge the Customer Additional Charges for the time spent and materials provided in accordance with FCC's scale of charges in force from time to time.
- 5.5 FCC may occasionally have to interrupt the Communications Service or change the technical specification of the Communications Service for operational or planned maintenance reasons, for upgrades or because of an emergency. FCC will give the Customer as much notice as reasonably possible of any planned interruption to the Communications Service. FCC shall not be liable for loss caused to the Customer as a result of such interruption.
- 5.6 FCC may without terminating this Agreement, suspend the Communication Services if any of the following apply:
- 5.6.1 FCC believes or has been advised of technical problems or safety problems;
 - 5.6.2 FCC believes it necessary in order to prevent fraud taking place;
 - 5.6.3 FCC has been ordered to comply with an instruction or request from a Government agency, emergency service organisation or other competent administrative or regulatory body;
 - 5.6.4 there is a need to maintain or upgrade the FCC designated Carrier Network at the Installation Location;
 - 5.6.5 the Customer's total charges incurred are more than the Customer's agreed credit limit.
- 5.7 FCC will use reasonable endeavours to provide the Customer with as much notice as possible of the suspension and to maintain the suspension for as short a period as is reasonably possible. However, the Customer acknowledges and agrees that in certain circumstances it may not be possible to provide notice of the suspension.
- 5.8 If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the Communication Fee for the period of the suspension.

5.9 If the Customer fails to pay a sum due under the terms of the Agreement then FCC reserves the right to suspend the Communications Service and levy an administration fee of £50 for lifting such a suspension.

6 Maintenance Services

6.1 FCC shall provide the Maintenance Services to the Customer in accordance with the Maintenance Schedule.

6.2 The Maintenance Service shall only be provided in relation to the Equipment and/or additional equipment as identified in the Maintenance Schedule.

6.3 The Maintenance Service will not cover the Excepted Services. The Excepted Services shall include but not be limited to:

- 6.3.1 the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by FCC regarding the operation of the Equipment);
- 6.3.2 repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of Clause 6.8;
- 6.3.3 the alteration, modification or maintenance of the Equipment by any person other than FCC without FCC's prior written consent;
- 6.3.4 the transportation or relocation of the Equipment save where the same has been performed at the request of FCC;
- 6.3.5 the maintenance or repair of any extension wiring (after the initial twelve-month warranty period under Clause 18 has passed), any Equipment not at the Site, or of anything other than the Equipment;
- 6.3.6 any defect or error in any software used upon or in association with the Equipment;
- 6.3.7 the supply of replacement cassettes, aerials, aerial systems and batteries;
- 6.3.8 the reprogramming of the Equipment to provide improved or modified service or facilities;
- 6.3.9 Equipment faults caused by telephone area code changes or changes in Carrier Networks;
- 6.3.10 ancillary items including but not limited to answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
- 6.3.11 maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis;
- 6.3.12 a dedicated helpdesk
- 6.3.13 a failure of Equipment due to changes to or disconnection from the approved system;
- 6.3.14 a failure of any supplies or connected services;
- 6.3.15 any changes in the environment; and

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- 6.3.16 a force majeure event.
- 6.4 In addition to the Maintenance Fee, FCC reserves the right to charge Additional Charges where:
 - 6.4.1 a Customer requests FCC to perform an Excepted Service;
 - 6.4.2 in the opinion of FCC, the call out is deemed to have been unnecessary;
 - 6.4.3 a fault has been reported in relation to the Equipment but after investigation the Equipment and/or its installation is not defective;
 - 6.4.4 a fault has been reported but the fault does not relate to the Equipment but to the Carrier Network. Where such a fault is discovered the Customer will be provided with a Carrier Network fault reference number in order to enable the Customer to attempt to recoup the Additional Charges from the Carrier Network. For the avoidance of doubt where the Carrier Network refuses to cover the Additional Charges, the Customer shall remain liable to pay them;
 - 6.4.5 the Customer wishes to relocate its premises and requires the Equipment to be moved and installed;
 - 6.4.6 an appointment is cancelled, re-scheduled or missed; and
 - 6.4.7 the Customer requests the Maintenance Service to be provided outside of Normal Working Hours.

Such Additional Charges shall be paid by the Customer within 10 days of the date of FCC's invoice.

- 6.5 Upon request by the Customer for the provision of the Maintenance Service, FCC shall use all reasonable endeavours to respond to and provide the Maintenance Services in accordance with the cover levels listed in the Maintenance Schedule. Such times and dates shall be estimates only and time shall not be of the essence for the performance of the Maintenance Services.
- 6.6 FCC shall have the right to make any changes to the Maintenance Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Maintenance Services, and FCC shall notify the Customer in any such event.
- 6.7 Where FCC considers Equipment needs replacing, FCC shall be entitled at its discretion to supply serviceable reconditioned items in substitute thereof.
- 6.8 The Customer shall:
 - 6.8.1 carry out minor maintenance adjustments suggested by FCC which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
 - 6.8.2 not permit alteration to call routing apparatus or extension wiring except by FCC, or by FCC's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either
 - (a) FCC so agrees in writing, or
 - (b) FCC fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;

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- 6.8.3 appoint at least one member of its staff as a “Principal Operator”, who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with FCC;
- 6.8.4 not employ or permit a third party to make any alterations to the programming or physical structure of the Equipment during the term of this Agreement;
- 6.8.5 ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;
- 6.9 If the Equipment is not (immediately prior to the Commencement Date) either already maintained by FCC or within the scope of an express warranty given by the supplier thereof, then FCC may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at FCC's then current charge rates, and such payment shall be in addition to the Maintenance Fee.
- 6.10 FCC does not warrant that the provision of the Maintenance Services will ensure that the Equipment will operate without interruption or error.
- 6.11 Without prejudice to the provisions of clause 23, FCC shall have the right to discontinue the Maintenance Services in respect of the Equipment (without further liability to the Customer) in the event that FCC's supplier and/or the manufacturer has ceased to supply such Equipment PROVIDED THAT FCC shall notify the Customer as soon as reasonably practical after it is aware of any cessation in supply of the Equipment and shall arrange with the Customer to either terminate the Contract or replace or upgrade the affected Equipment at the Customer's expense.
- 6.12 Without prejudice to the provisions of clause 23 FCC shall have the right to terminate forthwith the supply of the Maintenance Services (without further liability to the Customer) in the event that any necessary approvals required by FCC to maintain any of the Equipment are disallowed or revoked by any government or regulatory agencies or any third party.

7 Moving Site

- 7.1 If the Customer is moving from the Installation Location or any Site:
 - 7.1.1 the Customer may not remove the Equipment from the Installation Location without FCC's prior written consent. Such consent not to be unreasonably withheld;
 - 7.1.2 the Customer must inform FCC must as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Equipment. Unless otherwise requested, FCC, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Customer moves to a different exchange) to retain the Customer's relevant existing telephone number(s). If FCC can transfer the Customer's existing number to the new Site the relevant existing Contract will continue under the same terms and conditions. If FCC cannot transfer the Customer's existing relevant number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Contract.
- 7.2 If the Customer leaves the Equipment at the Site for the new occupier, the Customer is required to inform the new occupier that the relevant Communications Service and/or Maintenance Service will be discontinued if FCC is not contacted by the new occupier within seventy-two hours for the

purpose of entering into a new contract with FCC for such services and subject in any event to the agreement of such a contract.

- 7.3 If at the new Site the Customer receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating such agreement.

8 Voice over Internet Protocol (VOIP) and Session Initiation Protocol (SIP) fixed network services

- 8.1 Any Contract for VOIP and/or SIP services is conditional on the Customer acknowledging and accepting that:

- 8.1.1 the VOIP and/or SIP service may not offer all the features or resilience the Customer may expect from a conventional phone line;
- 8.1.2 the VOIP and/or SIP service may sometimes be limited, unavailable or disrupted due to events beyond FCC's control e.g. power disruptions, failures or the quality of any connection;
- 8.1.3 wherever possible, alternative arrangements should be made by the Customer and a primary telephone line maintained;
- 8.1.4 if the Customer uses the VOIP and/or SIP service to make Emergency Calls, the location information received by the emergency services will be limited to the Installation Location, which may not be the location from which the call originated;
- 8.1.5 Emergency Calls made using the VOIP and/or SIP service may fail if there is a power failure or connection failure; the ability for the Customer to make Emergency Calls cannot be guaranteed;
- 8.1.6 it will not be possible to make Emergency Calls if FCC has suspended or interrupted the VOIP and/or SIP service for any reason;
- 8.1.7 the Customer shall be required to provide/confirm his location when making a VoIP and/or SIP originated Emergency Call to enable the correct emergency organisation to respond; and
- 8.1.8 a VOIP and/or SIP originated Emergency Call will not receive the same network priority at all points over non- emergency calls as an Emergency Call made on a mobile network or on a circuit-switched fixed line.

9 Customer obligations

- 9.1 The Customer shall:
- 9.1.1 provide accurate and complete information to FCC to enable the parties to agree the Specification and at the times and in the format required by the Specification to enable FCC to deliver the Equipment and/or provide the Communications Service and/or Maintenance Service.
 - 9.1.2 provide or procure for FCC and/or FCC personnel reasonable access to premises and facilities at the locations for delivery and installation and/or maintenance of the Equipment;

- 9.1.3 provide or procure for FCC and/or FCC personnel reasonable access to Customer telephone systems and other equipment to the extent necessary for FCC to carry out its obligations under this Agreement;
 - 9.1.4 provide or procure for FCC and/or FCC personnel reasonable access to and cooperation by Customer personnel and those of its third-party representatives (if any);
 - 9.1.5 ensure that reasonable precautions shall be in place to protect the health and safety of FCC personnel while on at the Installation Location;
 - 9.1.6 ensure that the Specification which it provides is complete and accurate and contains all information FCC may require. Further that it is suitable for the Customer's needs;
 - 9.1.7 ensure that the Equipment is used in a normal and proper manner;
 - 9.1.8 ensure that it follows the reasonable instructions provided by FCC in relation to the use, operation and basic maintenance measures of the Equipment;
 - 9.1.9 prior to the Connection Date obtain and maintain all necessary licences, permissions and consents which may be required to enable FCC to supply and install the Equipment and to perform the Communication Service and/or Maintenance Service;
 - 9.1.10 respond promptly from time to time to the reasonable requests of FCC for relevant information, instructions and assistance, including the provision of site and building plans and full details of all other services in the vicinity of the proposed installation and maintenance;
 - 9.1.11 ensure that an adequate earthed mains electrical supply is available prior to the installation of the Equipment to enable its proper operation. That such supply is situated within 3 metres of each piece of equipment and in the case of MLU Access ensure that there is a designated carrier network test and termination point.
 - 9.1.12 arrange for the provision of any required circuits in relation to the connection to the Carrier Network or other outside services and shall pay all costs for circuit rentals, connection charges, inspections, commissioning, additional lines and other costs necessary in each case as reasonably necessary for FCC to perform its obligations under this Agreement.
- 9.2 The Customer shall prepare the Installation Location in accordance with FCC's instructions and provide proper environmental and operational conditions for the Equipment prior to delivery. The Customer shall be responsible for:
- 9.2.1 any costs relating to the preparation of the Installation Location; and
 - 9.2.2 any costs relating to the making good of the Installation Location including replacing and re-sitting items and decoration.
- 9.3 The Customer shall be responsible for the safe keeping and safe and proper use of the Communications Services and any Equipment after installation of the Services and the Customer undertakes in particular:
- 9.3.1 not to cause any attachments other than those approved for connection by FCC to be connected to any Equipment;
 - 9.3.2 not to contravene the Act or any other relevant regulations or licences;
 - 9.3.3 not to allow any unauthorised access to the Equipment or the Communications Services.

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- 9.4 If FCC's performance of any of its obligations in respect of Equipment, the Communications Service and/or the Maintenance Service is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 9.4.1 FCC shall without limiting its other rights or remedies have the right to suspend the supply of the Equipment and the performance of the Communications Service and/or Maintenance Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays FCC's performance of any of its obligations;
- 9.4.2 FCC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FCC's failure or delay to perform any of its obligations as set out in this clause 9.4; and
- 9.4.3 the Customer shall reimburse FCC on written demand for any costs or losses sustained or incurred by FCC arising directly or indirectly from the Customer Default.

10 Publishing of Customer details

- 10.1 If applicable and unless the Customer requests that FCC does not do it, FCC will, as soon as is reasonably practical, publish the Customer's name address and the telephone number for the Fixed Network Service in the relevant phone book serving the Customer's area and make the said telephone number available from a directory enquiries service.
- 10.2 If the Customer requests a special entry to be placed in the relevant phone book issued by the Carrier Network it must inform FCC at the earliest available opportunity. Where FCC agrees to use its reasonable endeavours to register a special entry, the Customer may be required to pay an additional charge and sign a separate contract in respect of that entry.
- 10.3 Where FCC allocate to the Customer a telephone number or code as part of the Communications Service, the Customer acknowledges that they will not acquire any legal, equitable or other rights in relation to any such telephone numbers or codes. FCC can withdraw or change any such telephone numbers or codes but will only do so if it is required un any legal or regulatory changes.

11 Software

- 11.1 Where FCC provides software to the Customer to enable the Customer to use the Communications Service ("Software"), FCC will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of this Agreement (and to extent necessary to use the relevant Services). If required by FCC, the Customer shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Customer to be able to use the Software.
- 11.2 Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile reverse-engineer or modify the Software, or copy the relevant manuals or documentation

12 Fees, expenses and credit limit

- 12.1 In consideration of FCC providing the Communications Service and/or Maintenance Service and/or Equipment in accordance with this Agreement, the Customer will pay to FCC the Communications Fee and/or Maintenance Fee and/or Equipment Fee as set out in the Pricing Schedule together with any Additional Charges.

- 12.2 FCC may from time to time increase its fees. If this increase exceeds 10%, the Customer may by writing to FCC within 30 days of the invoice for the increased price terminate the Agreement. Customers will not be allowed to terminate the Agreement if the increase has resulted from additions made to the system.
- 12.3 FCC may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 12.4 With effect from 01 April each year, FCC will increase the Access Fee. Such increase will be in line with the Retail Price Index rate published in January of the relevant year. The rate increase will be published on FCC's website and FCC shall provide the Customer with not less than [30] Business Days' notice in writing of the proposed increase.

13 Taxes and duties

- 13.1 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law.

14 Invoicing and payment

- 14.1 FCC shall invoice the Customer at any time after delivery of the Equipment and/or performance of the Communication Services and/or Maintenance Service in accordance with in the Pricing Schedule.
- 14.2 The Customer shall pay all invoices:
 - 14.2.1 in full without deduction or set-off, in cleared funds within 14 of the date of each invoice; and
 - 14.2.2 to the bank account nominated by FCC.
- 14.3 Time of payment is of the essence. Where sums due under this Agreement are not paid in full by the due date:
 - 14.3.1 FCC may, without limiting its other rights, charge interest on such sums at 3% a year above the base rate of Lloyds Bank from time to time in force, and
 - 14.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

15 Title and risk in Equipment

- 15.1 Risk in the Equipment shall pass from FCC to Customer upon delivery of the Equipment.
- 15.2 Title to the Equipment shall pass to the Customer once FCC has received payment in full and cleared funds for the Equipment. For the avoidance of doubt payment in full shall include a charge of 15% of the original purchase price for the Equipment.
- 15.3 Until title to the Equipment has passed to the Customer, the Customer shall:
 - 15.3.1 hold the Equipment as bailee for FCC;
 - 15.3.2 store the Equipment separately from all other material in the Customer's possession;
 - 15.3.3 take all reasonable care of the Equipment and keep them in the condition in which they were delivered;

- 15.3.4 insure the Equipment from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting FCC's interest on the policy;
 - 15.3.5 ensure that the Equipment is clearly identifiable as belonging to FCC;
 - 15.3.6 not remove or alter any mark on or packaging of the Equipment;
 - 15.3.7 inform FCC immediately if it becomes subject to any of the events or circumstances set out in clause 23.1; and
 - 15.3.8 on reasonable notice permit FCC to inspect the Equipment during the Customer's normal business hours and provide FCC with such information concerning the Equipment as FCC may request from time to time.
- 15.4 If, at any time before title to the Equipment has passed to the Customer, the Customer informs FCC, or FCC reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 23.1.2, FCC may:
- 15.4.1 require the Customer at the Customer's expense to re-deliver the Equipment to FCC; and
 - 15.4.2 if the Customer fails to do so promptly, enter any premises where the Equipment are stored and repossess them.

16 Warranty

- 16.1 FCC represents and warrants to the Customer that:
- 16.1.1 the Communications Service and/or Maintenance Services shall be performed:
 - (a) by an appropriate number of suitably qualified and experienced personnel;
 - (b) using all reasonable skill and care; and
 - (c) in accordance with all applicable laws and regulations in force from time to time.
 - 16.1.2 FCC has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this Agreement.
- 16.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

17 Limits on liability

- 17.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for:
- 17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 17.1.2 fraud or fraudulent misrepresentation;
 - 17.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 17.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 17.2 Subject to clause 17.1:

- 17.2.1 FCC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), for misrepresentation (whether innocent or negligent), for breach of statutory duty, or otherwise, for any loss of profit, business opportunity, goodwill, data, anticipated savings or any special, indirect or consequential loss arising under or in connection with this Agreement even if foreseeable or if FCC has been advised of the possibility of such damage; and
- 17.2.2 FCC's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Fees paid to FCC by the Customer under this Agreement for the 12 months immediately prior to the period in which the claim or claims are made.
- 17.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 17.4 This clause 17 shall survive termination of the Agreement.

18 Repair and Replacement of Equipment

- 18.1 FCC shall, for a period of 12 months from delivery or the date of Installation whichever is the latter and at its option, correct, repair, remedy, re-perform or refund any Equipment which is in FCC's opinion considered to be faulty or defective in terms of design, material and workmanship or installation, provided that the Customer:
 - 18.1.1 serves a written notice on FCC not later than three Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - 18.1.2 such notice specifies that some or all of the Equipment do not comply with Clause 3 and identifying in sufficient detail the nature and extent of the defects; and
 - 18.1.3 gives FCC a reasonable opportunity to examine the claim of the defective Equipment.
- 18.2 The provisions of this Agreement shall apply to any Equipment that is corrected, repaired, remedied or re-performed with effect from delivery or performance of that Equipment.
- 18.3 FCC shall not be liable to repair or replace Equipment in accordance clause 18.1 where:
 - 18.3.1 The Customer enters into a maintenance agreement for the Equipment with a third party unless such defect arises on or before delivery of the Equipment and notification is made to FCC in accordance clause 18.1.1;
 - 18.3.2 Such fault or defect or other problem arises from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Equipment by anyone other than FCC without its express prior written consent;
 - 18.3.3 Such fault or defect arises from the Customer failing to use the Equipment in compliance with this Agreement and follow any instructions provided by FCC;
 - 18.3.4 Such fault or defect or problem is wholly caused by any equipment or third party equipment used in connection with the Equipment and the Services.

18.4 FCC reserves the right to charge the Customer Additional Charges for the replacement and/or repair of the Equipment where such requirement arises as a result of one of the events listed in clause 18.3 or fair wear and tear.

19 Intellectual Property Rights

19.1 Unless otherwise expressly agreed in this Agreement, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement. Subject to any other terms expressly agreed by the parties, each party grants the other a license of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under this Agreement or make use of the Equipment supplied under this Agreement but not otherwise.

19.2 Each party shall be entitled to use in any way it deems fit any skills, techniques or know how acquired or developed or used in performance of this Agreement provided always that such skills, techniques or know how do not infringe the other party's Intellectual Property Rights or disclose or breach the confidentiality of the other party's Confidential Information.

20 Data Protection

20.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under the Data Protection Schedule.

21 Entire agreement

21.1 This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

22 Force Majeure

22.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration, and uses reasonable endeavours to minimise the effects of that event.

22.2 If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further ten days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

23 Termination

23.1 Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party, immediately terminate this Agreement if the other:

23.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

23.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial

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part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

- 23.2 FCC may without prejudice to its other rights and remedies, by notice in writing to the Customer, immediately terminate this Agreement if:
 - 23.2.1 the Customer fails to pay any sum due under the terms of this Agreement and such sum remains unpaid for 14 days after written notice from FCC that such sum has not been paid;
 - 23.2.2 any licence or agreement under which FCC or the Customer has the right to run its telecommunications system and in the case of the Customer connect it to the FCC system is revoked, amended or otherwise ceases to be valid;
 - 23.2.3 the Customer is suspected, in the reasonable opinion of FCC, of involvement with fraud or attempted fraud in connection with use of the Services or this Agreement;
 - 23.2.4 FCC are instructed by OFCOM or any other competent legal or regulatory authority to stop providing the Service(s) to the Customer.
- 23.3 In the event of termination of this Agreement for any reason:
 - 23.3.1 the Customer will immediately pay all monies then outstanding;
 - 23.3.2 the customer will immediately cease use of the Equipment and Services;
 - 23.3.3 where the Equipment is leased from FCC or where the Customer has yet to pay for the Equipment, the Customer shall allow FCC access to the Site(s) and Installation Location to remove the Equipment. In the event FCC are denied access, FCC shall be entitled to recover the cost of the Equipment from the Customer;
 - 23.3.4 FCC will be entitled to recover from the Customer any charges incurred by FCC as a result of third party termination or disconnection costs, as applicable;
 - 23.3.5 each party shall within seven days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information.
 - 23.3.6 the accrued rights and liabilities of the parties will not be affected; and
 - 23.3.7 clauses which expressly or by implication are to survive termination will do so.

24 Notices

- 24.1 Notices under this Agreement must be in writing and sent to the other party's registered office (or such other applicable address for service agreed by the parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:
 - 24.1.1 by first-class post: two Business Days after posting;
 - 24.1.2 by airmail: seven Business Days after posting;
 - 24.1.3 by hand: on delivery;
 - 24.1.4 by facsimile: on receipt of a successful transmission report from the correct number, and
 - 24.1.5 by email: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.

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25 Confidential Information

- 25.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 25.2 Each party undertakes to:
- 25.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including FCC personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - 25.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 25.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 25.4 The provisions of this clause shall not apply to information which:
- 25.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 25.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 25.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 25.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 25.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

26 General

- 26.1 Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.
- 26.2 Provisions which by their terms or intent are to survive termination of this Agreement will do so.
- 26.3 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 26.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.
- 26.5 FCC may freely assign, delegate, sub-contract or otherwise transfer its rights and obligations under this Agreement or to any company with which it may merge or to any company to which it may transfer its assets and undertaking, provided that it gives prior written notice to the Customer. The Customer may not assign, subcontract or encumber any right or obligation under this Agreement

without the prior written consent of FCC (such consent not to be unreasonably withheld or delayed).

- 26.6 No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.
- 26.7 If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.
- 26.8 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 26.9 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 26.10 The amounts due under this Agreement shall not change except as mutually agreed by the parties.
- 26.11 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

27 Governing law and jurisdiction

- 27.1 This **Agreement** and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 27.2 The parties irrevocably agree that the courts of England and Wales shall have **exclusive** jurisdiction to settle any dispute or claim arising out of, or in connection with, this **Agreement**, its subject matter or formation (including non-contractual disputes or claims).

Maintenance Schedule

Standard Service:

Maintenance Cover Details

Standard Cover – Complete hardware cover available Monday to Friday (excluding bank Holidays) between the hours of 08:30 and 17:30. Faults that results in 50% system crash will receive a response within 8 working hours, all other system faults will receive a response within 16 working hours.

Advanced Cover - Complete hardware cover available Monday to Friday (including bank Holidays) between the hours of 08:30 and 17:30. Faults that results in 50% system crash will receive a response within 4 working hours, all other system faults will receive a response within 8 working hours.

Complete Cover - Complete hardware cover available Monday to Friday (including bank Holidays) between the hours of 08:30 and 18:00. Faults that results in 50% system crash will receive a response of a man to site within 4 working hours, all other system faults will receive a response within 8 working hours.

Complete Cover - Complete hardware cover available Monday to Sunday (including bank Holidays) 24 hours per day. Faults that results in 50% system crash will receive a response within 4 hours, all other system faults will receive a response within 8 hours

Complete + Cover - Complete hardware cover available Monday to Sunday (including bank Holidays) 24 hours per day. Faults that results in 50% system crash will receive a response of an engineer to site within 4 hours, all other system faults will receive a response within 8 hours

Priority Definitions

- P1 Total system crash and/or complete loss of incoming and outgoing service to site.
- P2 Complete loss of incoming or outgoing calls, or a major fault affecting core service.
- P3 Faults outside of P1 and P2 whereby there is a minor disruption e.g., extension(s) failure, handset fault

Equipment covered

Scope of the work and exclusions:

Exclusions:

The maintenance service excludes any moves, adds or changes, analogue handsets, DECT (cordless) handsets replacements, software assurance, and any non-proprietary equipment (e.g., patch leads, mod taps, PC's, hubs, switches, headsets, third party applications).