



# Standard Terms & Conditions

## 1. GENERAL

These conditions are the only conditions upon which Talk Telecom Ltd (“the Company”) is prepared to deal with its Customer (“the Customer”) and they shall govern the contract to the entire exclusion of any other express or implied conditions.

These conditions embody the entire understanding of the parties and supersede any prior promises, representations, undertakings and implications.

The wiring between the network connection point as defined in the relevant legislation and any exclusion sockets is covered by this agreement, but the cost of any damage to this wiring shall be borne by the Customer at the maintenance current charging rates for work and materials, from time to time in force.

## 2 DURATION

The term of this agreement shall be subject to the provisions of this agreement providing for earlier termination for the initial period specified on the face hereof commence on the commencement date shown on the face hereof (“the commencement date”) and shall continue thereafter from year to year until either of the parties shall give to the other at least 90 days prior written notice to be received on or before the anniversary date, sent by recorded delivery post. This agreement is to be deemed as a ‘rolling’ agreement and if not terminated within the agreed period, will re-enter into commitment for the original agreement period thereafter.

## 3 THE CUSTOMER’S OBLIGATIONS

The Customer agrees:

3.1.1 To pay the initial maintenance charge for the maintenance service (as hereinafter defined) as specified on the face of this agreement (“the annual charge”) for “the equipment” (being the equipment described on the face hereof) on or before

the commencement date and thereafter annually on or before the anniversary of the commencement date.

**If payment is not made by the due date, maintenance will be suspended until such time as all outstanding monies are paid in full.**

3.1.2 To pay any additional payments that may become due during the period covered by the annual charge, as a result in adjustments in accordance with Clause 5 hereof upon presentation of the Company's invoice in respect of such additional payments.

3.1.3 If payments due under Clause 3.1.1 and 3.1.2 are not made in accordance with these clauses, the maintenance service shall be suspended until such time as all outstanding monies are paid in full.

3.1.4 To orally notify the Company immediately of any fault in the equipment or any repairs which may be necessary and to allow the Company's engineers to have free, full and timely access to the equipment the Customer providing adequate working and storage space and other facilities as the Company's engineers may reasonably require.

3.1.5 To ensure that the environment conditions at the address on the face hereof being the site of the equipment ("the site") (approved by the Company and/or Network Operator) are maintained at all times and to ensure that all the conditions at the site shall at all times comply with all relevant Statutory and other legal requirements.

3.1.6 Not to permit any person other than the Company to bring into service at the site any apparatus which is not itself part of the Equipment, which is to be connected to the Equipment unless:

3.1.6.1 The Company has so agreed;

3.1.7 Not to maintain service, repair or adjust or temporarily alter the Equipment or any part thereof.

3.1.8 To pay for the Company's charges for the reprogramming and/or service visits as a result of a programming error or service visits where the fault is not a fault in the Equipment or if the Equipment is reported as faulty and proves not to be so.

3.1.9 Not to assign the benefit of this contract or delegate that burdens of this contract without previous written consent of the Company.

3.1.10 To indemnify the Company against all liabilities costs and claims of whatever nature from third parties in the event that the Company is unable to keep the Equipment in good working order due to causes within the control of the Customer or the Customer allows the Equipment to be altered, adjusted or interfered with by persons other than the Company's authorised engineers or agents or other apparatus is fitted without the Company's agreement thereof.

#### **4. INTEREST AND VAT**

It is hereby agreed and declared:

The annual charge and any other amounts payable under the terms of this Agreement are exclusive of VALUE ADDED TAX or any other similar taxes or levies or duties which will be added to or charged on invoices at the appropriate rate.

Interest at an annual rate of 4% above Bank Of England's Base Rate from time to time will be accrued Daily and be calculated on a daily basis on any sum not paid on the due date until payment is received and cleared into the Company's nominated bank account.

#### **5. ADJUSTMENT AND VARIATIONS OF THE MAINTENANCE CHARGES**

The annual charge may be adjusted at any time in the event that:

The Maintenance Service provided for the Equipment is changed for any reason. The annual charge may then be adjusted to the appropriate rate for the revised service in accordance with the Company's standard maintenance charges in force at the relevant time.

Any change is made to the requirements of the Network Operator affecting the provision of Maintenance Service. In the event the Annual Charge shall be adjusted by such amount as is reasonable in the opinion of the Company.

The Customer requests that additional equipment be made the subject of this Agreement and the Company agrees to maintain that Equipment.

In addition the Company may upon 21 days prior written notice to the Customer give notice of an increase in the Annual Charge. Such adjustments shall not be made at intervals more frequent than once in any twelve month period.

## **6 THE COMPANY'S OBLIGATIONS**

Subject to the conditions set out below and subject to the payment to the Annual Charge by the Customer to the Company, the Company shall during the term of this agreement carry out in the manor set out in the schedule 1 such repair and replacement work resulting from fair wear and tear and/or faulty workmanship or faulty materials as is necessary to maintain the Equipment in efficient working order ("The Maintenance Service").

The obligations of the Company shall be under no liability in respect of;

Making good defect in electricity supply network service and connections and/or host PABX systems.

6.2.1.2 Any failure or defective working of the Equipment due to any fault failure or change in the electrical supply and/or Network service and connections and/or host PABX systems.

6.2.1.3 Any failure or defective working of the equipment caused directly or indirectly by any meteorological conditions including electrical storms.

6.2.2 The Customer should have duly notified the Company of such fault or necessary repair in accordance with Clause 3.1.4 hereof.

6.3 At the request and expense of the Customer and only where the Company in its absolute discretion elects so to do carry out other work of repair and maintenance or replacement to the Equipment apart from that describe in Clause

6.4 The Company reserves the right of a 14 day cooling period on new contracts for equipment installed not by the Company and reject any maintenance claims during this period if a registered engineer from the Company has not pre inspected the Customers equipment.

6.4.1 The Company reserves the right to reject any claim after the 14 day period for issues that have been advised within the initial 14 day period either verbal, written or by any other communication.

## **7. PERFORMANCE**

7.1 Subject to the provisions to this Agreement the Company warrants that it will exercise reasonable care and skill in the performance of its obligations here under.

7.2 The Company itself gives no undertaking or guarantee in respect of the description, quality or fitness for purpose of any materials used in the performance of its obligations hereunder but does undertake that, in the event that any defect in materials is notified to it within reasonable time of work being carried out by it will use its reasonable endeavours to secure recompense from it own supplier in respect there of and it will pass onto the Customer the benefit of any guarantee or indemnities given to it in respect thereof by its supplier.

7.3 Save as provided in paragraph 7.1 and paragraph 7.5 hereof;

7.3.1 All conditions and warranties expressed or implied, as to the quality of service to be provided by the Company or the fitness for any purpose of any materials used by the Company are hereby expressly excluded: and

7.3.2 The Company shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the Customer other than any liability which cannot be excluded by law.

7.4 The Customer acknowledges that the Annual Charge and other charges payable by it are calculated on the basis that the above Conditions will apply and that it has been put on notice by the Company that it should insure itself against losses in respect of which the Company's liability is excluded under this agreement.

7.5 The foregoing provisions of this condition shall not apply to the services provided to persons who deal as consumers (as that expression is so defined in section 12 of the Unfair Contract Terms Act 1977) unless the contract is an international supply contract (as described in section 26 of that act).

## **8. FORCE MAJEURE**

The Company shall have the right to cancel the provision of the Maintenance Service if it is prevented from or hindered in providing the service through any circumstances beyond its control (but not limited to) industrial action, war, fire or prohibition or enactment of any kind, without incurring any loss or damage whatsoever resulting there from.

## **9. DEFAULT AND TERMINATION**

The Company shall have the right at any time by giving notice in writing to the Customer to terminate this agreement forthwith in any of the following events:

If the Customer commits a breach of any of the terms and conditions of this Agreement and fails to remedy the same within 10 days of written notice requiring to do so.

If the Customer being a Company enters into liquidation whether compulsory or voluntary or administrative or administrative receivership or being an individual is made the subject of a bankruptcy order or in either case compounds with its creditors or has a receiver appointed of all or any part of its assets or takes or suffers any similar action on consequence of debt or in either case suffers an analogous procedure under the law of any jurisdiction.

## **10. GOVERNING LAW**

This contract is governed by the Laws of England and the English Courts (to the jurisdiction of which the Customer hereby irrevocably submits) shall have the exclusion jurisdiction to resolve any dispute arising out of it.

## Schedule 1

Class of service – In respect to the Customers request the Company shall at the earliest practical opportunity instruct a maintenance engineer to attend to, inspect/or repair the Equipment during the Companies normal working hours.

The Company will endeavour to ensure that major faults receive a response within 4 hours, and minor faults receive a response within 8 hours. The severity of the fault will dictate the length of time in regards to fault resolution. Requests for programming changes have a 3 day response time upon our receipt of your request.

### **THE COMPANY'S OBLIGATIONS**

#### **Terms & Conditions of Sale & Equipment Rental by Talk Telecom Ltd**

##### **1. GENERAL**

This Agreement constitutes the entire agreement between the Customer and *Talk Telecom Ltd* and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subjected matter of this Agreement. No alterations, waiver or modification of the printed terms of this Agreement shall be valid unless signed by a Director of *Talk Telecom Ltd* and by a person authorised by the Customer. Variance from the terms of this Agreement in any order or other written notification from the Customer will be of no effect.

##### **2. PRICES**

Catalogues, price lists and other advertising material are only indications of the type of goods offered and shall be subject to variations from time to time by *Talk Telecom Ltd* and no prices or other particulars contained therein shall be binding on *Talk Telecom Ltd*

The prices stated will not apply to quantities less than those quoted herein. Changes in specification and/or suspension of work by the buyer or lack of instructions necessary to perform the contact may result in price adjustments and/or delays in delivery.

##### **3. SPECIFICATION**

*Talk Telecom Ltd* reserves the right on the sale of any equipment to make before delivery any alteration to or departure from the specification or design of the equipment detailed overleaf provided that it shall not to a material extent adversely

affect the performance of the equipment or the quality of the workmanship or the materials used.

All specifications, drawings and technical documents issued by *Talk Telecom Ltd* either before or after conclusion of the contract are issued solely for the buyer's use in connection with the equipment and shall not be copied, reproduced or communicated to any third party without express consent in writing from *Talk Telecom Ltd*

#### **4. DELIVERY DATES**

The delivery dates quoted are not to be regarded as being of the essence of any contract and are to be treated as estimates only, not involving *Talk Telecom Ltd* in any liability through any inability to deliver within such time by reason of Act of God, war, civil insurrection, strike, storm, fire, flood, transportation difficulties, failure of supplier to deliver, material or labour shortage, law regulation or order of any government or agency or official thereof, or any cause not within their control whatsoever.

#### **5. TERMS OF PAYMENT**

Equipment notified by *Talk Telecom Ltd* as ready for dispatch or that has been dispatched will be invoiced and payment in full shall be due according to the terms stated. Our standard terms are 50% on order and 50% on completion unless otherwise agreed in writing by *Talk Telecom Ltd* Late payments will incur interest charges of 4% above the Bank Of England base rate and any additional legal and administration costs incurred by *Talk Telecom Ltd* in the recovery and collection of the said debt.

#### **6. SECURITY INTERESTS**

The equipment shall remain the property of *Talk Telecom Ltd* until paid for in full by the buyer.

Should payment of the amount owing under the contract not be made when due, *Talk Telecom Ltd* may remove and repossess the equipment (and for that purpose *Talk Telecom Ltd* shall be entitled to enter upon any premises occupied by the buyer) in addition to exercising such other rights or remedies as may be conferred on it by law.

Should the customer enter into a temporary loan agreement, they agree to keep the equipment safe at all times, not loan the equipment to anyone else, only use the equipment for business purposes, accept responsibility for any damage to or loss of the equipment, and adhere to the usage limits for data. The loan equipment remains property of TALK TELECOM LTD at all times.

If the equipment is not returned to TALK TELECOM LTD within 7 days after the end of the agreed term, the customer agrees to pay the loan fee detailed on the loan equipment form until the equipment is returned in working order. TALK TELECOM LTD will notify the customer of any faulty or missing equipment within 28 days of the delivery back to the TALK TELECOM LTD offices (Unit 1, Lancaster Court, Coronation Road, High Wycombe, Bucks HP 12 3TD). If any of the equipment is faulty or missing following inspection, the customer agrees to pay the cost for the replacement item listed on the loan form immediately.

## **7. INSPECTION AND ACCEPTANCE**

*Talk Telecom Ltd* products are carefully inspected and tested before dispatch. Minor variations from original specifications, which do not materially affect the operation and use of the equipment shall not be sufficient grounds for withholding payment or any part thereof. Likewise, any other separate order that has not been completed at point of install shall not be grounds for withholding payment. Furthermore, *Talk Telecom Ltd* accept no liability for failure to attain performance figures.

## **8. MAINTENANCE**

Comprehensive maintenance of equipment will be provided under the terms of the maintenance agreement which should be entered into not later than the date of installation.

## **9. INSTALLATION**

The buyer shall, prior to delivery, furnish adequate electrical current and fittings at a suitable site with such facilities as may be required in accordance with *Talk Telecom Ltd* installation instructions. If any special equipment or alterations to the building are required, the cost will be paid for by the Customer. A charge will be made for any relocating of the equipment subsequent to installation. The equipment will be installed by *Talk Telecom Ltd* under the supervision of *Talk Telecom Ltd* authorised representative but the buyer is responsible for and shall furnish the necessary additional labour required by *Talk Telecom Ltd* for placing any and all equipment where free access to the installation site is not available or where installation outside *Talk Telecom Ltd* normal working hours is required.

## **10. CANCELLATION OR REJECTION**

An order, once accepted by *Talk Telecom Ltd* is binding on the Buyer and may not be cancelled unless specifically agreed in writing by *Talk Telecom Ltd* and a charge of 25% of the purchase price, or 25% of the sum of all rental payments agreed, or

25% of the sum of all payments agreed to be made under any finance agreement proposed to be activated to finance the order may be charged as a cancellation fee. *Talk Telecom Ltd* reserves the right to charge for any work done on any equipment and/or service provided up to the agreed cancellation date.

If the performance figures obtained in any test specifically provided for in the contract are outside the limits specified therein, the buyer will be entitled to reject the equipment *Talk Telecom Ltd* will be given reasonable time and opportunity to rectify its performance.

## **11. GUARANTEE**

(a) *Talk Telecom Ltd* warrants that for a period of twelve months from the date of installation of the equipment and all components parts will be free from all defects in material and workmanship.

(b) If the buyer shall wish to make a claim on *Talk Telecom Ltd* under the provisions of (a) above it will immediately notify *Talk Telecom Ltd* of the part or parts which it claims to be defective and if upon inspection thereof *Talk Telecom Ltd* agrees that the part(s) is/are defective and that the terms of sub clause (a) above apply *Talk Telecom Ltd* sole obligation hereunder will be limited to providing a replacement part for the one which is defective.

(c) The warranty given by *Talk Telecom Ltd* in (a) shall not apply if the repair or replacement of a part or parts is required because of the accident, neglect or misuse of the equipment by the buyer or interference with the equipment by persons other than *Talk Telecom Ltd* engineers or except as specifically provided for herein *Talk Telecom Ltd* gives no warranties or representations express or implied statutory or otherwise.

## **12. LAW AND ARBITRATION**

Any contact made between the buyer and *Talk Telecom Ltd* shall be governed by the law of England.

## **13. DURATION**

The term of this agreement shall be subject to the provisions of this agreement providing for earlier termination for the initial period specified on the face hereof commence on the commencement date shown on the face hereof ("the commencement date") and shall continue thereafter from year to year until either of the parties shall give to the other at least forty two days prior written notice to be received on or before the anniversary date, sent by recorded delivery post. This agreement is to be deemed as a 'rolling' agreement and if not terminated within the

agreed period, will re-enter into commitment for the original agreement period thereafter.

## **Terms and Conditions for provision of Calls, Line Rental, Broadband, & VoIP Services – Talk Telecom Ltd**

1. Definitions and Interpretation Agreement: means these Terms and Conditions together with the Order.

Associated Company: means any company which is a parent company of the relevant entity or a subsidiary of such parent company, where parent company and subsidiary have the meanings set out in Section 736 of the Companies Act 1985.

BT: means British Telecommunications plc and its Associated Companies.

CPS: means carrier pre-selection.

Call Charge: means the Supplier's charges for calls made on the System (including reverse charge calls) as specified in the Order or otherwise notified by the Supplier.

Charges: means any or all of the charges and fees payable by the Customer for the Service pursuant to this Agreement.

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

Connection Charge: means the non-refundable charge payable by the Customer for installation and connection to the System as specified in the Order or otherwise notified by the Supplier.

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's equipment to an Exchange Line.

Customer: means the party purchasing the Service, as named in the Order.

Early Termination Fee: means the Rental for the balance of the Minimum Period that remains outstanding.

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

IPR: means all intellectual property rights including, without limitation, copyright, patents, trade marks, registered designs, design rights, mask works, know how and all other similarly protected rights.

Minimum Period: means twelve (12) months (or such longer period as is set out on the Order) from the date that the Service is first delivered to the Customer.

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

(i) in breach of any law, regulation, code of practice or 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 Director General of Telecommunications or any similar office that may be appointed in addition or in substitution.

Order: means the Service Order Agreement signed by the parties or such other document that the Supplier deems to constitute the Order.

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

Service: means any and all of the services that the Supplier has agreed to supply to the Customer, as set out in the Order. The Charges have been based upon Calls

&Lines only being provided as part of the Service where the Customer is also taking CPS from the Supplier in respect of the relevant Exchange Line. If the Calls & Lines service on any relevant Exchange Lines ceases to be provided, the Supplier shall be entitled to amend its Charges to its then standard charges for CPS as a stand-alone service. If CPS on any relevant Exchange Line ceases to be provided, the Agreement shall terminate forthwith, without prejudice to clause 2.2.

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

Supplier: Talk Telecom Ltd Limited (Registration No. 08317225) whose registered office is at Unit 1 Lancaster Court, Coronation Road, Cressex Business Park, High Wycombe, Buckinghamshire, HP12 3TD.

Supplier's Equipment: means any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Service.

System: means the network that the Supplier uses to provide the Service.

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

Working Day: means 08:30 to 17:30 Monday to Thursday and 08:30 to 17:00 Fridays but excluding public holidays in the United Kingdom recognised by the Supplier. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## **2. Duration and Scope of this Agreement**

2.1 This Agreement commences on the date of acceptance of the Order by the Supplier and will continue (subject to Clause 7) until terminated by either Party on forty two days written notice, to expire on the Minimum Period which commences on day of supply of service. This contract is deemed to be classed as a 'rolling contract' and will recommence for the original contract minimum period unless terminated in accordance with the above.

2.2 If the Customer terminates this Agreement during the Minimum Period and has no right to terminate under Clause 7, or if CALLS & LINES ceases to be provided on the relevant Exchange Line during the Minimum Period, the Customer shall pay, in addition to other sums payable up to the date of termination, the Early Termination Fee.

2.3 Until termination for whatever reason, the Supplier agrees to provide the Service to the Customer in accordance with this Agreement in consideration of the agreement of the Customer to use the Service in accordance with this Agreement and to pay the Charges when they are due.

2.4 The Customer hereby agrees to the termination of its existing contract for equivalent services with its existing communications service provider. The Customer shall provide to the Supplier any relevant account and Calling Line Identification numbers that may be required by

BT or other communications provider, and also access to carry out their obligations for the Supplier, BT and anyone acting on either of their behalf, to the Customer's premises if so required. The Customer acknowledges that the Supplier cannot process the provision of the Service until such information and access is provided.

2.5 The Customer shall provide a suitable and safe working environment for the Supplier, BT and anyone acting on either of their behalf, to the Customer's premises.

2.6 The provision of the Service requires that BT or other communications provider undertake programming at exchange level. Accordingly, it is agreed that any act, default or delay by BT or other communications provider in carrying out such programming or otherwise relating to or affecting the Service shall not be the responsibility of the Supplier.

2.6 The Calls & Lines Service is available only if the Customer has a valid contract for the use of an analogue Exchange Line (in the case of the wholesale access Service) or digital Exchange Line capable of supporting an existing ISDN2, 2e or 30 service (in the case of Wholesale ISDN2, 2e or 30 Service) direct Exchange Line (for each Exchange Line being ordered) which terminates on a Connection Point. If such

contract does not exist, the Customer must request the Supplier to have installed an Exchange Line, Connection Point and/or ISDN2, 2e or 30bearer, as appropriate.

2.7 The Customer acknowledges that certain services are incompatible with the Calls & Lines service available from BT, and such incompatible services are excluded from the Services. The Customer also acknowledges that some technical limitations within the System may not become apparent until after the Service has been working for some time: in such circumstances, the Service may need to be withdrawn in which case the Customer shall be entitled to a pro rata rebate of any relevant Charges paid in advance by the Customer.

2.8 The Customer's equipment to be used connected with the Service shall be connected by means of Connection Points and ancillary wiring. If the Customer wishes a Connection Point to be moved to another place within the Site, the Supplier may agree, subject to payment of the Supplier's applicable charges. The Customer shall, at the Supplier's request, arrange for the Customer's equipment to be reprogrammed by its designated maintainer in accordance with instructions provided by the Supplier, to enable any indirect or other access. The Supplier will have no responsibility in respect of such reprogramming.

### **3. The Supplier's General Obligations**

3.1 The provision of the Service is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place.

The Supplier shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. The Customer shall obtain any consent or facility that is necessary or desirable for the Supplier to provide the Service on the Site.

3.2 The Supplier shall exercise the reasonable care and skill of a competent communications operator. The Service cannot be guaranteed to be fault free but the Supplier shall provide the same quality of service to the Customer as it provides from time to time to its customers generally.

3.3 The Customer shall report any fault to the Supplier's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair

service. Where no Supplier's Equipment is installed, the Supplier may request that the Customer first have its designated maintainer check the Customer's equipment. 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.

3.4 The Supplier may alter the name or number of a telephone exchange serving the Exchange Line, the telephone number, or any other name, code or number whatsoever that the Supplier allocates to the Customer in instances where such alterations are required as a result of necessary operational or technical changes to the Supplier's communications network or changes in legal or regulatory requirements.

3.5 The Supplier will allocate a telephone number to the Customer in respect of the Exchange Line and, unless the Customer requests otherwise, will arrange for a free standard entry to be made in a Telephone Directory. If the Supplier agrees to arrange a special entry (for which a charge would be made), this will be subject to additional terms and conditions.

3.6 Where the Supplier allocates telephone numbers to the Customer, the Customer will not (subject to any statutory or authorisation provisions relating to number portability) acquire any rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark.

3.7 If the Supplier has an agreement with the Customer's existing communications service provider, the Supplier can, at the Customer's request, provide the Customer with a telephone line using the Customer's existing number subject to the following:

3.7.1 There are no technical reasons preventing the use of the number;

3.7.2 The existing communications service provider agrees to release the relevant telephone number(s); 3.7.3 The Customer agrees to cease service on the existing communications service provider's telephone line using the telephone number and authorises the Supplier to arrange for that cease to take place;

3.7.4 The Customer provides the Supplier with full details including (but not limited to) the account name, account number, service address and billing address;

3.7.5 The Customer pays the Supplier's charges (if any) for number portability;

3.7.6 Number portability is only available at the Site.

3.8 The Supplier does not accept any liability for claims relating to the Customer's ability to use or to continue use of a particular telephone number.

#### **4. The Customer's Obligations**

4.1 The Customer shall not utilise and shall ensure that no other person uses the Service:

4.1.1 For storing, reproducing, transmitting, communicating or receiving any Offending Material; or

4.1.2 Fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or

4.1.3 To make offensive, indecent, menacing, nuisance or hoax Calls; or

4.1.4 Contrary to instructions that the Supplier may give to the Customer.

4.2 The Customer will provide the Supplier with all information that the Supplier needs and allow the Supplier to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures allowed by the Protection Act 1998 and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so by Ofcom, the law or any relevant authority.

4.3 The Customer shall keep all of the Supplier's Equipment at the Site safe and shall pay for the replacement and/or repair of any of the Supplier's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed. The Customer shall not alter or move any of the Supplier's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or

signs on it, nor permit anyone else to do so. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Supplier's Equipment or the System in any way. The Customer will allow the Supplier to inspect, test, modify, change, add to, replace or remove any Supplier's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Supplier access at all times to collect any of the Supplier's Equipment in the Customer's possession.

4.4 The Customer shall at its own cost arrange for the required Site specific conditions, as notified by the Supplier. This will include, without limitation, mains electricity supply, connection points and computer terminals. The Customer shall prepare the Sites in accordance with the Supplier's reasonable instructions and reinstate them at the Customer's expense after the Supplier has completed any work necessary for the Supplier to be able to provide the Service.

4.5 The Customer shall ensure that any equipment (excluding Supplier's Equipment) that it uses in connection with the Service meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Supplier to do so at the Customer's expense.

4.6 The use of computing equipment and/or computer software owned and/or controlled by the Supplier (including computer networks and systems accessed via the network) is permitted for bona fide purposes and is subject to authorisation. Unauthorised or improper use of these facilities is a breach of this Agreement and may give rise to withdrawal of the facilities and/or proceeding under the Computer Misuse Act 1990.

4.7 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.

4.8 The Customer shall comply with any requirements notified by the Supplier relating to number portability.

4.9 Where the Customer's existing account with BT includes BT equipment which is not required for the provision of the Service, the

Customer shall contact BT in order to remove the BT equipment or move such equipment to another BT account.

## **5. Payments**

5.1 The Supplier shall be entitled to send an invoice to the Customer for the Connection Charge when the Telephone Service is available to the Customer, for the Rental monthly in advance and for the Call Charges after the end of the month in which the relevant calls were made.

The Customer shall pay all Rental and Call Charges whether the Customer or someone else uses the Service. The Call Charges will be calculated using the details recorded or logged at the Supplier's telephone exchange and not details recorded by the Customer.

5.2 The Customer shall pay any cancellation charges, abortive visit charges, engineering visit or site survey charges, or maintenance service charges imposed on the Supplier by BT and relating to the Service, save where such abortive visit or service maintenance charges arise through the Supplier's default.

5.3 The customer shall pay an initial connection fee of £0.05 per call on any external outbound call from the supplier network. The supplier may change the level of its connection charges after giving the Customer four (4) weeks written notice of its intention to do so.

5.4 The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.

5.5 The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.

5.6 The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier within fourteen (14) days of the date upon them. If

the Customer's credit rating decreases at any time, the Supplier shall be entitled to revise the credit terms to require payment upon invoice or in less than 14 days. If the Customer fails to make payment by this date in full, in addition to the Supplier's right to suspend set out in Clause 6.1, the Supplier may charge a late payment fee of £10.00 per account, per month, as well as interest at the rate of 4% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full.

5.7 The Supplier may change the level of its Charges after giving the Customer four (4) weeks written notice of its intention to do so. This notice may be included in an invoice to the Customer. If the Supplier increases the Charges by more than the Retail Price Index during the Minimum Period, the Customer may terminate the Agreement in accordance with Clause 2 within ten (10) days of receipt of the notice of increase, without the obligation to pay the Total Early Termination Fee.

5.8 The Supplier may also change the level of its Charges during or after the Minimum Period, retrospectively as well as prospectively, as a consequence of (a) any Ofcom direction, determination, order or similar decision, or (b) any notice issued by BT correcting an error in the amount or application of a charge or payment under its interconnect agreement with the Supplier. In both cases, the Supplier shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated.

5.9 Where the Supplier agrees to do work outside a Working Day at the request of the Customer, the Supplier may charge the Customer in accordance with the Supplier's applicable man-hour rate.

## **6. Suspension and Variation of the Service**

6.1 The Supplier may, in its sole discretion and upon giving the Customer written notice, suspend or vary the Service without compensation (unless due to the default of the Supplier) for any period during which:

6.1.1 The Supplier is required to do so in order to avoid a breach of the authorisation of the Supplier under the Communications Act 2003, as amended from time to time;

6.1.2 The Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Radio Communications Agency, an emergency services organisation or a competent administrative authority;

6.1.3 The Supplier reasonably suspects or believes that the Customer is in breach of Clause 4.1 or the Customer is in breach of Clause 5;

6.1.4 The Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Supplier; or

6.1.5 The Supplier's contract with BT relating to the Services is suspended, varied or terminated.

6.2 The Customer acknowledges that BT may make alterations to the service (including, without limitation, conversions, shifts, reconfigurations and renumbers) which may result in disruption.

6.3 The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Service where suspension or variation is implemented as a result of any actor omission of the Customer.

6.4 The Supplier may at any time suspend the Service or any part of it, without liability:

6.4.1 To vary the technical specification of the Service in order to comply with any relevant law or regulation or direction from a competent authority; or

6.4.2 To repair, maintain or improve the Service; The Supplier will, during such suspension under this Clause 6.4, try to ensure that minimum disruption is caused to the Service.

## **7. Termination**

7.1 Either party may immediately terminate this agreement by written notice if the other party commits a material breach that is not capable of being remedied.

7.2 Either party may serve written notice requiring the other party to remedy within ninety (90) days of receipt of the notice a material breach of this agreement that is capable of remedy. In the absence of a remedy in this period, the party that served notice to remedy may immediately terminate this agreement by written notice.

7.3 Either party may immediately terminate this agreement by written notice if the other party commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other party's assets or the other party suffers seizure of any of its property for non payment of monies owing.

7.4 If the customer wishes to end the agreement before agreed term the customer agrees to pay all fixed line rental and or service costs until the end of the agreed term plus £50 per month remaining on the agreed term. In the case of broadband service cancellation, an additional fixed fee of £50 is charged on disconnection / transfer.

7.5 If this agreement is signed before the supplier has completed its credit check of the customer, the supplier shall be permitted to terminate this agreement immediately by written notice if the customer fails to pass the supplier's credit policy

7.6 The supplier shall be permitted to terminate this agreement immediately by written notice at any time for the reasons set out in clauses 6.1.1 and 6.1.2.

7.7 The rights to terminate this agreement given by this clause 7 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach. Following termination of the service, telephone service may be disconnected unless the customer makes alternative arrangements with the supplier or another communications service provider.

7.8 If the customer or existing service supplier cancel the transfer of services to the provider after the order has been accepted by the supplier, there will be an pre transfer termination fee of £50 per telephone line and or broadband connection.

## **8. Limitations and exclusions of liability**

8.1 This clause 8 sets out the supplier's entire liability (including any liability for acts or omissions of the supplier's employees, agents or subcontractors) to the customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of this agreement. Except as set out in this agreement, the supplier provides no warranties, conditions or guarantees as to the description or quality of the service, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law. The supplier's duty in performing any obligations under this agreement is only to exercise reasonable care and skill of a reasonably competent communications provider.

8.2 Subject to clause 8.4, the supplier's entire liability for non-fraudulent representation, or implied warranty, condition or other term, or under any duty at common law, or in tort (including negligence) or under the express terms of this agreement shall not in the aggregate, in any period of 12 months, exceed the charges paid in respect of that 12 month period. If for any reason this limit of liability shall be found to be unlawful or invalid by a court of competent jurisdiction, the supplier's entire liability as referred to in this clause shall not exceed £1,000,000 (one million pounds sterling) for any one incident or series of related incidents and £2,000,000 (two million pounds sterling) in aggregate during the term of this agreement.

8.3 Notwithstanding anything to the contrary in this agreement, but subject to clause 8.4, the supplier shall not be liable to the customer under the express terms of this agreement or by reason of any non fraudulent representation, or implied warranty, condition or other term, or any duty at common law, or any tort, for any loss of profits or revenue, loss of income or business, loss of goodwill or reputation, loss of anticipated savings, loss of data, loss of use, or damages, loss or expenses payable by the customer to any third party or any indirect or consequential or special loss or damage whatsoever and howsoever caused.

8.4 The supplier shall not exclude or restrict liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.

8.5 Each of the Supplier and the Customer acknowledges that it considers the provisions of this clause 8 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.

8.6 The provisions of this Clause 8 shall survive termination or expiry of the agreement.

## **9 Confidentiality and Data Protection**

9.1 The Customer agrees to keep all confidential information confidential, to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this agreement. This clause shall not apply to information that the customer can prove:

9.1.1 Is in the public domain otherwise than by the customer's breach;

9.1.2 It already had in its possession prior to obtaining the information directly or indirectly from the Supplier; or

9.1.3 A third party subsequently disclosed to the Customer free of restrictions on disclosure and use. This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from the Supplier.

9.2 The Customer may disclose Confidential Information if required to do so by law, regulation or rules of a securities exchange or other regulatory authority, but only to the extent of the relevant requirement. The Customer shall promptly inform the Supplier of the requirement and will co-operate with the Supplier in the disclosure.

9.3 The use of any information, including Calling Line Identification, 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 Calling Line Identification if it believes that the Customer has failed to comply with this Clause or the Supplier receives a complaint from any relevant authority.

9.4 The Customer hereby consents to BT disclosing to the Supplier any information relating to the transfer or removal, of BT's retail products and services that exist on the Exchange Line as at the time of transfer of the service from BT to the Supplier.

## **10 Ownership**

All IPR relating to the subject matter of this Agreement shall vest in, and ownership of the Supplier's Equipment and the System (including any works performed by the Supplier to connect the Site to the System) shall remain with the Supplier or its licensors, as appropriate. 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 Supplier's Equipment or the System, except as expressly set out in this Agreement. This Clause shall survive termination or expiry of the Agreement.

## **11 Circumstances Beyond Reasonable Control**

11.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay.

11.2 If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

## **12 Notices**

12.1 Notices must be written and delivered by hand or first class prepaid post. The address for service on the Supplier (subject to any change notified by the Supplier) is: Talk Telecom Ltd Limited, Unit 1, Lancaster Court, Coronation Road, High Wycombe, Bucks, HP12 3TD. The address for service on the Customer is as set out in the most recent invoice.

12.2 A notice will be deemed served as follows:

12.2.1 On hand delivery, except where this is outside a Working Day, in which case the next Working Day;

12.2.2 Two Working Days after posting (proof that the envelope containing the notice was properly addressed, prepaid and posted and that it has not been returned to the sender shall be proof of posting).