

MAINTENANCE AGREEMENT

BACKGROUND

- The Seller carries on the business of selling the Products and Services.
(A) The Customer wishes to buy and the Seller wishes to supply and sell the Products & Services subject the terms and conditions set out in this agreement.
(B)

1 INTERPRETATION

In this Maintenance Agreement:

Commencement Date this a reference to the date detailed overleaf as the Commencement Date;

Customer this is a reference to the person named overleaf;

Equipment this a reference to the equipment detailed overleaf and includes all internal cabling as well as the network test termination point or other demarcation point.

Maintenance Services in line with clause 4 below this is a reference to fault rectification;

Minimum Term 7 years from the Commencement Date;

Previously Paid Termination Charges means the early termination charges paid by the Seller on behalf of the Customer to the Customer's previous maintenance provider at any time before or after the Commencement Date; and

Seller Switch Telecommunications Ltd, incorporated and registered in the United Kingdom whose registered office is at 8 Clover House, Boston Road, Sleaford NG34 7HD.

2 BASIS OF CONTRACT

- 2.1 The Seller undertakes to provide the Maintenance Services in respect of the Equipment upon the terms and conditions of this Maintenance Agreement. This is in line with the terms of clause 3 in consideration of the Customer's payment for the annual service charge.

- 2.2 This Maintenance Agreement shall come into force on the Commencement Date and subject to clause 2.3 below, shall continue, unless terminated earlier in accordance with these terms, until the end of the Minimum Term. The term of this Maintenance Agreement shall automatically extend for 36 months (Extended Term) at the end of the Minimum Term and at the end of the each Extended Term, unless either party gives written notice to the other, no later than 42 days before the end of the Minimum Term or the relevant Extended Term as the case may be.

- 2.3 In the event the Customer has ten or less employees, clause 2.2 shall not apply. Instead this Maintenance Agreement shall continue, unless terminated earlier in accordance with the provisions of this Maintenance Agreement, until either party gives 42 days written notice to the other party to terminate this Maintenance Agreement expiring on or after the Minimum Term.

3 MAINTENANCE CHARGES

- 3.1 It is for the Customer to pay the annual service charge for the Maintenance Service that is payable per annum in advance or paid monthly. Services provided to the Customer in addition to the Maintenance Services are due to be paid by the Customer upon presentation of the Sellers' invoice.

- 3.2 The Seller may elect to invoice the Customer via email.

- 3.3 Payments outstanding for more than 30 days in relation to an overdue invoice in line with this Maintenance Agreement entitles the Seller to suspend its obligation under this Maintenance Agreement until the overdue amount is settled.

- 3.4 On any amount unpaid the Seller is entitled to charge the Customer interest the rate of 2% per month or part of a

month until payment is settled in full. Interest will be charged both before and after any judgements.

4 MAINTENANCE SERVICES

Included within Maintenance Services:

15.11.1 Upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance on site or remotely) by the Seller or any fault reporting in an item of Equipment; and

4.1.2 The carrying out by the Seller of such repairs replacement of parts or adjustment as the Seller shall deem necessary to remedy the said fault.

Appropriately qualified engineers will carry the maintenance in question.

5 TIMES FOR MAINTENANCE SERVICES

- 5.1 The Seller commits to rectify faults in line with the following hours based upon the agreed tier of service detailed overleaf (this commitment is subject to nonprevention from circumstances outside the Seller's control):

5.1.1 TIER 1: From the hours of 9.00am and 5.00pm Mondays to Fridays excluding weekends and public holidays

5.1.2 TIER 2: From the hours of 9.00am and 5.00pm Mondays to Fridays including weekends and public holidays

5.1.3 TIER 3: 24 hours a day including weekends and public holidays

- 5.2 The Seller will use its reasonable endeavours to ensure that response times to the Customer's notification of a fault are not more than:

5.2.1 8 working hours if the Equipment has failed completely; or

5.2.2 16 working hours if the Equipment has failed partially.

6 EXCLUSIONS

- 6.1 Under this Maintenance Agreement the Seller accepts no obligations or liability whatsoever:

6.1.1 in respect of any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Seller's approval;

6.1.2 sums owing by the Customer to the Seller remain unsettled;

6.1.3 where loss is suffered by the Customer due to the Equipment neglecting to perform to its specifications and the failure is based on faults in the service provided by the network provider;

6.1.4 in respect of any delay in the execution of any repair;

6.1.5 in respect of remedying defects in electricity or network supply to the Equipment; defects caused by failures or surges of electrical power, failure of the Equipment due to changes in the electrical supply service or the public network.

6.1.6 in respect of any defect arising due to circumstances beyond the Seller's reasonable control including (without limitation) flood, fire, lightning, war, sabotage, civil disturbance or governmental action, import regulations or embargoes.

7 LIMITATION OF LIABILITY

- 7.1 Unless otherwise expressly provided in this Maintenance Agreement, the following provisions set out the Seller's entire liability (including any liability for the acts and omissions of its employees, agents and subcontractors) to the Customer in respect of:

7.1.1 any breach of the Seller's contractual obligations arising under the Maintenance Agreement; and

7.1.2 any representation (other than fraudulent misrepresentation) statement or tortious act or omission including negligence arising under or in connection with these conditions.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS

CLAUSE 7

- 7.2 Any act or omission on the part of the Seller or its employees, agents or subcontractors falling within clause 7.1 above is described as an 'Event of Default'.

- 7.3 To the extent the law does not permit such liability to be excluded the Seller's liability to the Customer for death or injury resulting from its own or that of its employees', agents' or subcontractors' negligence shall not be limited.

- 7.4 Subject to condition 7.3 above, the Seller shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Seller had been advised of the possibility of the Customer incurring the same.

- 7.5 To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Seller's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to £200,000.

8 THE CUSTOMER'S OBLIGATIONS

The Customer undertakes to:

- 8.1 Settle with the Seller outstanding amounts owed under this Maintenance Agreement within the agreed settlement dates.

- 8.2 make sure that the Equipment is not:

8.2.1 from the address of original installation not moved;

8.2.2 altered, adjusted or interfered with in any way except by the Seller's servants or agents. Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing.

- 8.3 Provide the Seller with complete access to the Equipment during the agreed hours in line with the agreed service tier to enable maintenance of the said Equipment to be carried out.

- 8.4 In the event of errors, by persons other than the Seller's servants or agents, the Customer must pay the Seller's charges for reprogramming the Equipment due to such errors.

- 8.5 Not alter or extend the Equipment without prior notification to the Seller (an additional charge may, at the Seller's sole discretion be made for the maintenance of altered Equipment); provide the Seller with details of the installer of the Equipment, a copy of its Pre-Connection Inspection Certificate and access to all relevant site records.

9 ADDITIONAL EQUIPMENT

Where the Seller agrees, during the terms of this Maintenance Agreement to provide the Customer with additional equipment ('Additional Equipment'):

a) such Additional Equipment will form part of the Equipment for the purposes of this Maintenance Agreement and the Agreement Term shall be extended to a period of 7 years from the date on which the Additional Equipment was provided to the Customer; and

b) the annual service charge for the Maintenance Service of the Equipment shall be increased by an amount equal to the agreed service charge for the Maintenance Service as specified on the Additional Equipment purchase order in respect of the additional Equipment such increase to be effective from the date on which the Additional Equipment is provided to the Customer.

10 DATA PROTECTION

- 10.1 The following definitions are used in this clause 10:

Applicable Law means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Maintenance Services are provided to or in respect of; (ii) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;

Customer Personal Data means any Personal Data which the Seller receives pursuant to the performance of the Maintenance Services;

Data Protection Legislation means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and

Personal Data, **Data Subject**, **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation.

- 10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 10.8, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Seller is the Data Processor in respect of Customer Personal Data. Clause 10.7 sets out the nature and purpose of processing by the Seller, the duration of the processing and the types of Personal Data and categories of Data Subject.

- 10.3 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Seller for the duration and purposes of this Maintenance Agreement.

- 10.4 Without prejudice to the generality of clause 10.2, the Seller shall, in relation to any Customer Personal Data processed by it in connection with the performance by the Seller of its obligations under this Maintenance Agreement:

10.4.1 process that Customer Personal Data only on the written instructions of the Customer unless the Seller is required by Applicable Law to process Customer Personal Data otherwise than in accordance with the Customer's written instructions. Where the Seller is relying on Applicable Law as the basis for processing Customer Personal Data, the Seller shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Seller from so notifying the Customer;

10.4.2 immediately inform the Customer if the Seller becomes aware of a written instruction given by the Customer under clause 0 that, in the Seller's opinion, infringes Data Protection Legislation and the Seller shall be entitled to suspend the Maintenance Services (or at the Seller's discretion just the part of the Maintenance Services which are impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;

10.4.3 ensure that it has in place appropriate technical and organisational measures:

a) to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and

b) in so far as possible and taking into account the nature of the processing, to assist the Customer in the fulfilment of the Customer's obligations to respond to any request from a Data Subject relating to Customer Personal Data;

10.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;

10.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;

10.4.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of this Maintenance Agreement unless required by Applicable Law to store the Customer Personal Data; and

10.4.7 maintain and on request provide to the Customer information to demonstrate its compliance with this clause 10 and allow for audits by the Customer or the Customer's designated auditor subject to the Customer; giving the Seller reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to the Seller's business.

- 10.5 The Customer consents to the Seller appointing the following as third-party processors of Customer Personal Data under this Maintenance Agreement:

Name or categories of sub-processor	What sub-processing do they do
Switch Telecommunications LTD	All Customer information required for the provision of the Maintenance Services.
Gamma	All Customer information required for the provision of Equipment and management of the Maintenance Services.
Tekton & Go Cardless	Secure storage of Customer bank details for invoicing and payment.

- 10.6 The Seller confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10. As between the Customer and the Seller, the Seller shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.

- 10.7 This clause sets out the nature and purpose of processing by the Seller, the duration of the processing by the Seller, the types of Personal Data and the categories of Data Subject:

10.7.1 *Purpose of processing:* For the purpose of the supply by the Seller of the Maintenance Services to the Customer in accordance with this Maintenance Agreement.

10.7.2 *Nature of processing:* Use of data in order to contact and liaise with the Customer and for the supply of the Equipment and Maintenance Services.

10.7.3 *Duration of processing:* The term of this Maintenance Agreement.

10.7.4 *Types of Personal Data:* Full names, email addresses, emails and contact telephone numbers of employees and directors of the Customer.

10.7.5 *Categories of Data Subject:* Data in relation to employees of the Customer.

- 10.8 The Seller records and monitors all calls received and made by it and will be the Data Controller in respect of any Personal Data collected as a result. Please see the Seller's privacy notice at www.Switch-Tel.co.uk for details of how the Seller will use Personal Data collected from such calls.

11 TERMINATION

- 11.1 In addition to the provisions of clause 2.2, this Maintenance Agreement can be terminated:

a) by the Customer during the Minimum Term by giving at least 42 days written notice to the Seller expiring on an anniversary of the Commencement Date. To validly terminate this Maintenance Agreement in this way the Customer must pay the annual service charges in respect of the remainder of the Minimum Term after the date of termination.; or

b) by the Seller if the Customer is in breach of any provision of this Maintenance Agreement and does not rectify the breach within 14 days of the Seller's notice of such breach.

11.2 A notice given to a party under this Clause 11 shall be:

11.2.1 sent to the party for the attention of the Managing Director at the address specified overleaf; and

11.2.2 sent by recorded delivery.

- 11.3 In the event this Maintenance Agreement is terminated prior to the expiry of the Minimum Term due to any act or omission of the Customer, the Customer shall on demand, in addition to its payment obligations under clause 11.1(a), reimburse to the Seller the Previously Paid Termination Charges.

12 GENERAL

- 12.1 The entire agreement between the parties in relation to the maintenance of the Equipment are represented by the terms of this Maintenance Agreement including the details overleaf. Variations will only become binding when they have been signed by the director of the Seller.

12.2 If the Seller, in an effort to comply with any statute, regulation or British Standards Institution requirement deems it necessary to vary any terms of this Maintenance Agreement, then the Seller may do so.

12.3 The annual charge detailed within this Maintenance Agreement is subject to annual review. Increases will be in line with the rate of inflation determined in accordance with Retail Price Index.

12.4 Where the Seller receives erroneous notification of an Equipment fault in excess of two occasions in any calendar month, the Seller has the discretion to make a proportionate charge in line with current rates.

12.5 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.6 No delay or failure by the Seller in enforcing any provision of this Maintenance Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Seller of any breach of the Maintenance Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Seller shall be effective unless in writing.

12.7 If any provision of this Maintenance Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Maintenance Agreement and the remainder of the provision in question shall not be affected.

12.8 This Maintenance Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

12.9 Whilst the Seller may assign its rights and obligations, the Customer may not assign its rights and obligations.

TERMS AND CONDITIONS FOR THE ORDER OF EQUIPMENT

- 1
- DEFINITIONS AND INTERPRETATION
- 1.1
- The definitions and rules of interpretation in this clause apply in these conditions:
Equipment: the equipment agreed in the Order Form to be rented by You from Switch-Tel or a Funder.
Funder: a third party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with You.
Order Form: the order form overleaf signed by You.
Pre-Installation Services: the assistance to be provided by Switch Telecommunications LTD pursuant to condition 2.3 below together with all other services which Switch Telecommunications LTD deems is required in readiness for installation of the Equipment which shall include without limitation order administration, the booking of engineers and site surveys.
Rental Agreement: means the agreement for the rental of the Equipment in the standard form produced by the Funder or Switch Telecommunications LTD as the case may be.
You or Your: the person, firm or company who signs the Order Form order the Equipment.
- 1.2
- Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2
- THE CONDITIONS
- 2.1
- By signing the Order Form You expressly agree to hire the Equipment in accordance with the terms of the Rental Agreement, subject to the Funder and/or Switch Telecommunications LTD (as the case may be) approving Your application for finance.
- 2.2
- You will use Your best endeavours to obtain third party finance from a Funder and to enter into a Rental Agreement as soon as possible after the date of this Order Form.
- 2.3
- Switch Telecommunications LTD shall use reasonable endeavours to assist You with Your application for third party finance from a Funder but shall have no liability to You if any application You make fails to secure the finance requested.
- 2.4
- You will make available to Switch Telecommunications LTD or a Funder all information reasonably requested by either of them in support of Your application for finance for the Equipment.
- 2.5
- In the event Your application for third party finance with a Funder is unsuccessful, Switch Telecommunications LTD may, in its sole discretion, provide finance for You and enter into a Rental Agreement with You directly, but shall be under no obligation to do so. If Switch Telecommunications LTD is agreeable to this You agree that you will enter into the Rental Agreement accordingly.
- 2.6
- Once You have entered into a Rental Agreement, You will be bound by the provisions of the Rental Agreement and consequently You cannot cancel the rental of the Equipment unless otherwise permitted in accordance with the terms of the Rental Agreement.
- 2.7
- In the event Your application for third party finance with a Funder is unsuccessful and Switch Telecommunications LTD is unable or unwilling to enter into a Rental Agreement with You, Switch Telecommunications LTD will notify you accordingly and this order for Equipment will be deemed cancelled without any liability on You or Switch Telecommunications LTD.
- 2.8
- By signing the Order Form you expressly acknowledge and authorise Switch Telecommunications LTD to immediately commence the Pre-Installation Services and to purchase the Equipment and you agree to use all reasonable endeavours to assist Switch Telecommunications LTD to enable the Pre-Installation Services to be carried out (including without limitation providing access to any property reasonably required by Switch Telecommunications LTD) notwithstanding they are carried out prior to the entry into a Rental Agreement. You also expressly acknowledge and agree that you will be liable for payment in respect of such Pre-Installation Services and the Equipment in the event you cancel this order as set out in condition 2.9 below or otherwise fail to enter into a Rental Agreement.
- 2.9
- If, after signing the Order Form, and before entry into a Rental Agreement, You wish to cancel the order for the Equipment, then You are permitted to do so by giving Switch Telecommunications LTD 5 business days notice in writing subject to the payment of a cancellation fee equal to:
2.9.1 Costs Incurred: [15%] of the cost incurred by Switch Telecommunications LTD in purchasing the Equipment (it being acknowledged that this represents a genuine pre-estimate of the loss that will be incurred by Switch Telecommunications LTD in not being able to return or otherwise sell that proportion of the Equipment) together with the costs incurred in carrying out the Pre-Installation Services. The costs of the Pre-Installation Services will be calculated by reference to the time incurred by Switch Telecommunications LTD employees or contractors in carrying out the Pre-Installation Services multiplied by Switch Telecommunications LTD standard rates for such services in force at the relevant time. In this respect the current rate for half day surveys is £375 plus VAT and for a full day survey is £550 plus VAT; or in Switch Telecommunications Ltd's sole discretion a cancellation fee equal to:
2.9.2 Funder Payment: [15%] of the aggregate fee and commission that would have been received by Switch Telecommunications LTD from a Funder in the event You entered into the Rental Agreement with the Funder, it being acknowledged that such fee and commission represents payment to Switch Telecommunications Ltd for introducing You to the Funder and undertaking Pre-Installation Services in relation thereto. Switch Telecommunications Ltd agree that notwithstanding the above in no circumstances will You be liable for a cancellation fee which exceeds a sum equal to the aggregate of three (3) quarterly rental payments that would have been charged had You entered into the Rental Agreement.
- 2.10
- If, after signing the Order Form you fail for any reason (other than as provided for in condition 2.7) to enter into a Rental Agreement you will be liable to pay a cancellation fee calculated in accordance with condition 2.9.
- 2.11
- Any cancellation of this order for Equipment for any reason shall be without prejudice to any other services that You have ordered from Switch Telecommunications Ltd which shall remain in full force and effect in accordance with the applicable terms and conditions for that service. For example, if You have also ordered network services, those services will continue notwithstanding termination of this order and nothing in this order will operate to give Switch Telecommunications Ltd or You any rights to terminate those services beyond what is contained in the terms and conditions for those services which You have signed up to.
- 2.12
- Title to the Equipment shall remain in the ownership of the Funder at all times, unless You have entered into a Rental Agreement with Switch Telecommunications Ltd in respect of the Equipment, in which case title to the Equipment shall remain in the ownership of Switch Telecommunications Ltd at all times.
- 2.13
- By signing the Order Form you warrant and represent that you are a body corporate and not an individual for the purposes of the Consumer Credit Act 1974.
- 2.14
- You shall not, without the prior written consent of Switch Telecommunications Ltd, assign, transfer, charge, sub- contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 2.15
- Switch Telecommunications Ltd may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.
- 2.16
- No one other than the parties to the Order Form or their successors and permitted assignees, shall have any right to enforce any of these terms and conditions
- 2.17
- These terms and conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions or its subject matter or formation.
- 3
- DATA PROTECTION
- 3.1
- The following definitions are used in this clause 3:
Applicable Law means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Equipment and/or Pre-Installation Services are provided to or in respect of; (ii) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;
Customer Personal Data means any Personal Data which Switch Telecommunications Ltd receives pursuant to the performance of the Pre-Installation Services or supply of the Equipment;
Data Protection Legislation means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and
Personal Data, Data Subject, Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation.
- 3.2
- Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 3.8, the parties acknowledge that for the purposes of the Data Protection Legislation, You are the Data Controller and Switch Telecommunications Ltd is the Data Processor in respect of Customer Personal Data. Clause 3.7 sets out the nature and purpose of processing by Switch Telecommunications Ltd, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 3.3
- Without prejudice to the generality of clause 3.2, You will ensure that You have all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Switch Telecommunications Ltd for the duration and purposes of this contract.
- 3.4
- Without prejudice to the generality of clause 3.2, Switch Telecommunications Ltd shall, in relation to any Customer Personal Data processed by it in connection with the performance by Switch Telecommunications Ltd of its obligations under this contract:
3.4.1 process that Customer Personal Data only on Your written instructions unless Switch Telecommunications Ltd is required by Applicable Law to process Customer Personal Data otherwise than in accordance with Your written instructions. Where Switch Telecommunications Ltd is relying on Applicable Law as the basis for processing Customer Personal Data, Switch Telecommunications Ltd shall promptly notify You of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits Switch Telecommunications Ltd from so notifying You;
3.4.2 immediately inform You if Switch Telecommunications Ltd becomes aware of a written instruction given by You under clause 0 that, in Switch Telecommunications Ltd's opinion, infringes Data Protection Legislation and Switch Telecommunications Ltd shall be entitled to suspend the Pre-Installation Services and supply of Equipment (or at Switch Telecommunications Ltd's discretion just the part of the Pre-Installation Services or supply of Equipment which are impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;
3.4.3 ensure that it has in place appropriate technical and organisational measures:

to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

a) in so far as possible and taking into account the nature of the processing, to assist You in the fulfilment of Your obligations to respond to any request from a Data Subject relating to Customer Personal Data;

3.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;

3.4.5 assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;

3.4.6 at Your written direction, delete or return Customer Personal Data and copies thereof to You on termination or expiry of this contract unless required by Applicable Law to store the Customer Personal Data; and

3.4.7 maintain and on request provide to You information to demonstrate its compliance with this clause 3 and allow for audits by You or Your designated auditor subject to You; giving Switch Telecommunications reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to Switch Telecommunications Ltd's business.

3.5 You consent to Switch Telecommunications appointing the following as third-party processors of Customer Personal Data under this contract:

Name or categories of sub-processor	What sub-processing do they do
Switch Telecommunications LTD	All of Your information required for the provision of Equipment and lease finance where required.
Tower Propel Barclays	All of Your information required for the provision of Equipment and lease finance where required.
Tekton & Go Cardless	Secure storage of Your bank details for invoicing and payment.

3.6 Switch Telecommunications Ltd confirms that it has entered or (as the case may be) will enter into with each third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 3.

3.7 As between You and Switch Telecommunications Ltd, Switch Telecommunications Ltd shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 3. This clause sets out the nature and purpose of processing by Switch Telecommunications Ltd, the duration of the processing by Switch Telecommunications Ltd, the types of Personal Data and the categories of Data Subject:

3.7.1 *Purpose of processing:* For the purpose of the supply by Switch Telecommunications Ltd of the Equipment and Pre-Installation Services to You in accordance with this contract.

3.7.2 *Nature of processing:* Use of data in order to contact and liaise with You, in order to supply the Equipment and Pre-Installation Services and in order to carry out credit checks.

3.7.3 *Duration of processing:* The term of this contract.

3.7.4 *Types of Personal Data:* Full name, home address, contact telephone number, email address, emails, bank details, data of birth and proof of identity of You and/or Your employees.

3.7.5 *Categories of Data Subject:* Data in relation to You and/or Your employees.

3.8 Switch Telecommunications Ltd records and monitors all calls received and made by it and will be the Data Controller in respect of any Personal Data collected as a result. Please see Switch Telecommunications Ltd's privacy notice at www.Switch-Tel.co.uk for details of how Switch Telecommunications Ltd will use Personal Data collected from such calls.

NETWORK SERVICE AGREEMENT TERMS AND CONDITIONS

DEFINITIONS

- 1.1 In these Conditions:
- Commencement Date:** the date specified in the Network Service Agreement.
- Contract:** the contract between the Customer and the Supplier for the provision of the Service in accordance with these Conditions and the Network Service Agreement.
- Customer:** the person or company cited in the Network Service Agreement for whom the Supplier has agreed to provide the Service.
- Intellectual Property Rights:** all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Minimum Term:** the agreed minimum term for the provision of the Service as specified in the Network Service Agreement.
- Network Service Agreement:** the Network Service Agreement entered into by the Customer.
- Previously Paid Termination Charges:** means any early termination charges paid by the Supplier on behalf of the Customer to the Customer's previous network provider at any time before or after the Commencement Date.
- Service:** the telecommunications service to be supplied to the Customer's telephone lines by the Supplier and which may include a broadband access line that will provide internet connectivity as outlined in the Specification.
- Supplier's Website:** www.Switch-Tel.co.uk
- Specification:** the description or specification of the Service as set out in the Network Service Agreement.
- Supplier:** Switch Telecommunications Ltd, incorporated and registered in the United Kingdom whose registered office is at 8 Clover House, Boston Road, Sleaford NG34 7HD
- Toll Fraud:** any interference or access to the Customer's phone system or the Customer's telephone lines and/or the making of calls by any third party utilising the Customer's telephone lines whether fraudulent or otherwise. For the avoidance of doubt, fraudulent activity includes but is not limited to: (i) calls made from the Customer's PBX without their knowledge; (ii) calls made utilising the Customer's authentication details; and (iii) calls made from an authenticated IP address.
- 1.2 References to legislative provisions are to be understood as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 Headings do not affect interpretation and are provided for convenience only.
2. **BASIS OF CONTRACT**
- 2.1 The Contract shall come into force on the date the Network Service Agreement is signed by the authorised representatives of the Customer and received by the Supplier and subject to condition 2.2 below, shall continue, unless terminated earlier in accordance with the provisions of the Contract, until the end of the Minimum Term. The term of the Contract shall automatically extend for 36 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate this Contract at the end of the Minimum Term or the relevant Extended Term as the case may be.
- 2.2 In the event the Customer or the Supplier is in breach of condition 2.1, I shall not apply. Instead the Contract shall continue, unless terminated earlier in accordance with the provisions of these Conditions, until either party gives 90 days written notice to the other party to terminate the Contract expiring on or after the Minimum Term.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, description matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Service described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by any trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
3. **SUPPLY OF THE SERVICE**
- 3.1 The Service shall be supplied by the Supplier to the Customer from the Commencement Date in accordance with the Specification in all material respects.
- 3.2 The Supplier reserves the right to change the Specification without the prior consent of the Customer so that the Service conforms to any applicable safety or other statutory requirements.
4. **CUSTOMER OBLIGATIONS**
- 4.1 The Customer shall:
- a) co-operate with the Supplier in all matters relating to the Service and provide the Supplier with assistance from the Customer's employees where reasonably required;
 - b) permit or procure permission for the Supplier to freely and safely access its premises and service connection points;
 - c) provide the Supplier with such information and material as the Supplier may reasonably require in order to supply the Service, and ensure that such information is accurate in all material respects;
 - d) ensure that only attachments approved for connection under the Telecommunications Act 1984 are connected with the Service;
 - e) use the Service in accordance with such instructions/conditions as may be notified in writing by the Supplier from time to time;
 - f) not use the Service in a manner which constitutes a violation or infringement of the rights of any other party and in this respect the Customer shall, without limitation, (i) secure implementation and management of their systems including any hardware not provided by the Supplier such as Firewalls or PBX; (ii) maintain security and confidentiality of authentication details for online service portals and other services; (iii) mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to the Supplier; and (iv) report the incidents to the Police;
 - g) obtain and maintain all necessary licences, permissions, licenses, consents, registrations and approvals which may be required before the Commencement Date;
 - h) be solely liable for any costs arising as a result of Toll Fraud;
 - i) in the event the Contract includes broadband services, obtain and install at its own cost such equipment as the Supplier advises is required for the provision of the broadband services;
- 4.2 The Customer acknowledges that the Service known as 'fraud monitor' is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of the Supplier and therefore the Supplier accepts no liability whatsoever for any costs incurred as a result of a breach of security. The Supplier reserves the right to invoice the Customer for any such costs.
- 4.3 The Customer shall indemnify and keep indemnified the Supplier completely and in full against all costs and losses (including loss of liabilities, damages, claims, charges, damage to property, call costs charged by BT or others and expenses) incurred by the Supplier as a result of or in connection with:
- a) any breach of the Customer's obligations under the Contract;
 - b) the death of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer;
 - c) Toll Fraud or other fraudulent activity;
 - d) investigations into Toll Fraud or other fraudulent activity.
- 4.4 The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to this condition 4. The Supplier recommends the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource.
- 4.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- a) the Supplier shall be entitled to suspend the Service and to suspend performance of the Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 4, and
 - c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
5. **PRICE AND PAYMENT**
- 5.1 The price of the Service shall be the relevant price at the time the Service is in use as determined by the tariff stated in the Network Service Agreement.
- 5.2 The Supplier shall be entitled to vary the tariff stated in the Network Service Agreement from time to time by giving not less than three months written notice to the Customer.
- 5.3 Some tariffs may be subject to a connection or minimum call charge.
- 5.4 The Supplier shall invoice the Customer monthly in arrears. The Supplier may at its discretion submit invoices to the Customer via email. The Customer may also view its invoices on line on the Supplier's Website.
- 5.5 The Customer shall pay each invoice submitted by the Supplier by direct debit by the due date detailed on the invoice. Time for payment shall be of the essence of the Contract.
- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Service at the same time as payment is due for the supply of the Service.
- 5.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.8 The Supplier reserves the right to charge an administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the Direct Debit due date, without informing the Supplier in advance.
- 5.9 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to the Supplier within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiry of this period.
6. **INTELLECTUAL PROPERTY RIGHTS**
- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Service shall be owned by the Supplier. The Customer acknowledges that, in respect of any third-party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier the license such rights to the Customer.
7. **LIMITATION OF LIABILITY**
- 7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of goods and Services Act 1982 (title and quiet possession).
- 7.2 Subject to condition 7.1:
- a) the Supplier shall not under circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - b) the Supplier shall have no liability whatsoever if any sum owing by the Customer to the Supplier has not been paid;
 - c) the Supplier shall, as stated in condition 4.2, have no liability for any breach of the Customer's security; and
 - d) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the aggregate price paid by the Customer to the Supplier in the three month period immediately preceding the matter giving rise to the liability question.
- 7.3 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 Contract.
- 7.4 The Supplier's employees or agents are not authorised to make any representations concerning the Service unless confirmed by the Supplier in writing.
8. **DATA PROTECTION**
- 8.1 The following definitions are used in this clause 8:
- Applicable Law** means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Service is provided to or in respect of; (ii) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;
- Customer Personal Data** means any Personal Data which the Supplier receives pursuant to the performance of the Service;

- Data Protection Legislation** means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and
- Personal Data, Data Subject, Data Controller and Data Processor** have the meanings as defined in the Data Protection Legislation.
- 8.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 8.8, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor in respect of Customer Personal Data. Clause 8.7 sets out the nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 8.3 Without prejudice to the generality of clause 8.2, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of the Contract.
- 8.4 Without prejudice to the generality of clause 8.2, the Supplier shall, in relation to any Customer Personal Data processed by it in connection with the performance by the Supplier of its obligations under the Contract:
- 8.4.1 process that Customer Personal Data only on the written instructions of the Customer unless the Supplier is required by Applicable Law to process Customer Personal Data otherwise than in accordance with the Customer's written instructions. Where the Supplier is relying on Applicable Law as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer.
 - 8.4.2 immediately inform the Customer if the Supplier becomes aware of a written instruction given by the Customer under clause 8.0 that, in the Supplier's opinion, infringes Data Protection Legislation and the Supplier shall be entitled to suspend the Service (or at the Supplier's discretion just the part of the Service which is impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;
 - 8.4.3 ensure that it has in place appropriate technical and organisational measures:
- a) to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and
 - b) in so far as possible and taking into account the nature of the processing, to assist the Customer in the fulfilment of the Customer's obligations to respond to any request from a Data Subject relating to Customer Personal Data.
- 8.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;
- 8.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;
- 8.4.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by Applicable Law to store the Customer Personal Data; and
- 8.4.7 maintain and on request provide to the Customer information to demonstrate its compliance with this clause 8 and allow for audits by the Customer or the Customer's designated auditor subject to the Customer giving the Supplier reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to the Supplier's business.
- 8.5 The Customer consents to the Supplier appointing the following as third-party processors of Customer Personal Data under the Contract:
- | Name or categories of sub-processor | What sub-processing do they do |
|-------------------------------------|--|
| Switch Telecommunications LTD | All Customer information required for the provision of calls as part of the Service. |
| Xero, Tekton&Go Cardless | Secure storage of Customer bank details for invoicing and payment |
| BT, TalkTalk, Gamma, BDR | All Customer information required for the provision of calls as part of the Service. |
- 8.6 The Supplier confirms that it has entered or (as the case may be) will enter into with each third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 8. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.
- 8.7 This clause sets out the nature and purpose of processing by the Supplier, the duration of the processing by the Supplier, the types of Personal Data and the categories of Data Subject:
- 8.7.1 **Purpose of processing:** For the purpose of the supply by the Supplier of the Service to the Customer in accordance with the Contract.
 - 8.7.2 **Nature of processing:** Use of data in order to contact and liaise with the Customer and in order to supply the Service.
 - 8.7.3 **Duration of processing:** The term of the Contract.
 - 8.7.4 **Types of Personal Data:** Name, telephone number, email address, emails and bank details.
 - 8.7.5 **Categories of Data Subject:** Data in relation to the Customer and end-user employees of the Customer.
- 8.8 The Supplier will ensure that all personal data received and made by it and by the Data Controller in respect of any Personal Data collected as a result. Please see the Supplier's privacy notice at www.Switch-Telco.uk for details of how the Supplier will use Personal Data collected from such calls.
9. **INSOLVENCY OF CUSTOMER AND SUSPENSION**
- 9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving 14 days written notice to the Customer if:
- a) the Customer suspends payment of its debts or is unable to pay its debts as they fall due or admits liability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - b) a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
 - c) the Customer is the subject of a bankruptcy petition or order;
 - d) a creditor or encumbrances of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - e) an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - f) a floating charge holder over the assets of the Customer has appointed an administrative receiver;
 - g) a receiver is appointed over the assets of the Customer;
 - h) the Customer fails to pay any amount due under this Contract on the Due Date;
 - i) the Customer at any time does not have the necessary valid licence to run its telecommunicationssystem;
 - j) the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach.
- 9.2 Without limiting its other rights or remedies:
- a) the Supplier may terminate the Contract for convenience without liability at any time by giving 30 days written notice to the Customer if the Customer;
 - b) the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 9.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them. If the Service is suspended the Customer shall remain liable to pay the price until the Contract is terminated.
10. **TERMINATION BY THE CUSTOMER PRIOR TO EXPIRY OF MINIMUM TERM AND TERMINATION FEE**
- 10.1 Notwithstanding condition 2.1 and 2.2, the Customer may terminate the Contract upon 90 days written notice to the Supplier prior to the expiry of the Minimum Term subject to payment by the Customer of an early termination fee equal to the average of the price paid by the Customer to the Supplier in the three months immediately preceding the notice of termination multiplied by the number of months remaining within the Minimum Term at termination. If less than three months has elapsed prior to the date of the notice of termination an average of the price paid by the Customer from the Commencement Date to the date of the termination notice shall be used multiplied by the number of months remaining within the Minimum Term at termination.
- 10.2 In the event the Contract is terminated prior to the expiry of the Minimum Term due to any act or omission of the Customer, the Customer shall on demand, in addition to its payment obligations under clause 10.1, reimburse to the Supplier the Previously Paid Termination Charges.
11. **CONSEQUENCES OF TERMINATION**
- 11.1 On termination of the Contract for any reason:
- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 11.2 In the event the Supplier terminates the Contract in accordance with condition 9.1 prior to the expiry of the Minimum Term the Customer shall be liable to pay an early termination fee calculated in accordance with the provisions of condition 10.
12. **GENERAL**
- 12.1 The Supplier shall not be liable or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform the Service or any of the Supplier's obligations under the Contract if the delay or failure was due to a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance, governmental action, default of any supplier of services to the Supplier or any legal and regulatory restrictions.
- 12.2 If any dispute arises in connection with the Contract then the parties will attempt to settle it. If the parties are unable to reach an agreement then the Customer may refer the dispute to any recognised dispute resolution service. Details of these and how to refer a dispute are set out within the Supplier's Website www.Switch-Tel.co.uk
- 12.3 The Supplier reserves the right to change any term of the Contract (including the charges) at any time. This includes the ability to separately charge for services which may be currently included in the Service as free. The Supplier will publish details on line on the Supplier's Website at least 2 weeks before the change is to take effect and will give the Customer reasonable notice of any variation before it takes place.
- 12.4 The parties agree that the terms of the Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.
- 12.5 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.6 Any notice shall be in writing and, unless otherwise specified in the relevant paragraph, be addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 12.7 Any notice of termination of the Contract served by the Customer must be marked for the attention of the Managing Director of the Supplier and sent by recorded delivery.
- 12.8 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
- 12.9 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.10 The Supplier's rights are cumulative and in addition to any rights available at common law.
- 12.11 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or forfeiture (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

The Direct Debit Guarantee



- This Guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme.
- If there are any changes to the amount, date or frequency of your Direct Debit Switch Telecommunications LTD will notify you 10 working days in advance of your account being debited or as otherwise agreed. If you request Switch Telecommunications LTD to collect a payment, confirmation of the amount and date will be given to you at the time of request.
- If an error is made in the payment of your Direct Debit by Switch Telecommunications LTD or your Bank or Building Society, you are entitled to a full and immediate refund of the amount paid from your Bank or Building Society
- If you receive a refund you are not entitled to, you must pay it back when Switch Telecommunications LTD asks you to.