

Phoneworcs Limited

Terms and Conditions for the Provision of our services

IMPORTANT POINTS

- The Services under these Terms and Conditions (the “**Terms and Conditions**”) are designed for business customers only.
- You must not use the Services for any Prohibited Activities (e.g. illegal or improper use).
- You agree that we and our Service Providers can process personal data from you and from your Users, which we collect or which you submit to us during any sales or registration process or when we provide the Services to you, for a number of purposes, including to provide you with the services and products you order from us, to allow you to create and manage a Customer Account, to deliver products and services ordered by you and for product analysis and direct marketing (subject to your preferences) as explained in our Privacy policy.

IT IS AGREED AS FOLLOWS

1 Ordering Process

- 1.1 We shall use our reasonable endeavours to provide the Service by the Service Commencement Date(s) or such later date(s) as we may notify, subject to you ensuring (at your expense) that all consents, approvals, servitudes, rights of way necessary for the provision of the Services to the Premises and other similar rights relating to installation of the relevant equipment have been obtained.
- 1.2 Time is not of the essence nor shall time be made of the essence against us by notice in connection with any estimated dates we give you, including but not limited to the Service Commencement Date or with any equipment delivery date. If no delivery dates are specified, delivery will be within a reasonable time. To the maximum extent permitted by applicable law, we accept no liability to you if we do not meet any dates requested by you or any other estimated date including without limitation the Service Commencement Date (but we will use reasonable endeavours to start our Services on the relevant Service Commencement Date).
- 1.3 You acknowledge that in order to avoid delays occurring in the ordering process, we will need to be notified by the relevant Service Providers as applicable of any products or services presently in use by you that are incompatible with our Services. Such relevant Service Providers, are under a strict duty not to disclose information about a customer's services to a third party unless the customer has consented to such disclosure. In entering into these Terms and Conditions, you give consent to the relevant Service Providers, to disclose such information to us. You give us authority to act as your agent to arrange your connection to our Services.

2 Our Services

- 2.1 We will provide you with the Services that we agree to provide to you and, where applicable, with the Equipment subject to you complying with the terms of these Terms and Conditions.
- 2.2 We will use reasonable endeavours to ensure the security of the Services but you acknowledge and agree that there is always a risk of security being breached for reasons beyond our control, where for instance the Service is provided through a third party network.

- 2.3 The Services under these Terms and Conditions are designed for business customers only. You have confirmed to us that you are a trading business. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumers Rights Act 2015 do not apply to these Terms and Conditions.
- 2.4 We will use reasonable endeavours to ensure that the Service is available for use at all times by you but you acknowledge and affirm that, owing to the nature of IP and telecommunications networks, it is impossible to provide an uninterrupted or error-free Service. We will not accept any responsibility or liability to you or any third party in the event of a failure in the IP or telecommunications network outside our control or caused by reasons outside our control.
- 2.5 We may at any time make any changes to the Services supplied to you, as we reasonable deem necessary provided that they are not likely to be detrimental to you and if we make any material changes to the Services we:
- (a) ensure that the amended Services are similar, and of a similar quality, to the Services you were receiving; and
 - (b) provide you as much notice as practicable prior to any such change taking effect (having due regard to the likely impact on you and the nature of such change).

3 Charges and Payment

- 3.1 The Charges for the Services shall be fixed for 12 months at the rates set out in our Quotation. Call charges falling outside the Services quoted for shall be calculated in accordance with our standard prices as applicable from time to time and as displayed on our website;
- 3.2 Services will be invoiced monthly in advance, additional call charges outside the Services or associated WLR Services will be invoiced monthly in arrears.
- 3.3 You shall pay each invoice submitted by us:
- (a) by direct debit within 14 days of the date of the invoice; and
 - (b) or in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 3.4 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 3.5 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 17 or 18 you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 3.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.
- 3.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4 Your use of our Services

- 4.1 You shall:

- (a) not allow an alternative supplier (or any third party) to override or bypass our Services either through the installation of equipment or through any network provider during the Term of these Terms and Conditions;
- (b) not use the Services in any way we reasonably consider is, or is likely to be detrimental, to the provision of the Services to you or to your Users or to services we provide to any other customers; and
- (c) be responsible for any engineering reprogramming costs, cessation fee and/or equipment removal costs that may be required to terminate the Service of your previous supplier(s).

4.2 You shall ensure that:

- (a) you use the Services in accordance with: (i) these Terms and Conditions; (ii) any reasonable instructions given by us from time to time (including without limitation regarding health, security, safety or quality of the Services); and (iii) any laws, regulations and licenses which apply to the use of the Services; and
- (b) your hardware is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant UK standards and requirements.

4.3 We shall be entitled to rely upon the specification of the Services and any advice given by you (in relation to the suitability of the Services for meeting your requirements) such that to the extent that the Services comply with such specification and with such advice then we shall be deemed to have supplied the same in accordance with these Terms and Conditions.

4.4 You must not use the Services, including but not limited to internet related Services, associated computer security or backup Services and software:

- (a) in a way that breaches, any legislation or any licence applicable to you or that is in any way illegal, unlawful or fraudulent;
- (b) in a way that causes us to lose or breach or contravene any legislation or our authorisation to act as a public communications provider.
- (c) to make nuisance calls;
- (d) to distribute, deliver, transmit, knowingly receive, upload, download, publish, use or re-use any information or material which is offensive, abusive, defamatory, indecent, obscene, immoral, unlawful (including but not limited to child pornography) or menacing, or in breach of any intellectual property, privacy or any other rights of third parties or which might cause annoyance, inconvenience or needless anxiety to anyone, or to commit a fraud or other criminal offence;
- (e) for purposes other than the genuine use of our Services;
- (f) to knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to you or your Users;
- (g) to falsify the true ownership of software or other material or information contained in a file that you or you Users make available via our network or our Service Provider's network;
- (h) to send or procure the sending of any chain letters or unsolicited advertising or promotional material (i.e. spamming);
- (i) to propagate computer worms or viruses;
- (j) to attempt to gain unauthorised entry to any site or network including but not limited to our network or our Service Provider's network;

- (k) contrary to any reasonable instructions we give you to protect the integrity and quality of our Services or otherwise;
- (l) in a manner which restricts or inhibits any other customer of our Services from using or enjoying our, or a Service Provider, products or services; or

(collectively referred to as the “**Prohibited Activities**”).

If you become aware that you or any of your Users are using the Services, our network or our Service Provider's network to perform any Prohibited Activities you shall stop such activities immediately.

- 4.5 You may only use Services for your own personal use. This means you must not resell or commercially exploit any of the Services.
- 4.6 Your breach of your obligations under this Clause 4, may result in the suspension or termination of the affected Services or in the termination of these Terms & Conditions at our sole discretion. If we become aware that you or any of your Users are performing any of the Prohibited Activities, we will notify you of the breach in writing. If we have not received, within one (1) Business Day, a satisfactory response from you confirming that the breach has been cured and detailing the actions that have been taken to stop the Users performing any Prohibited Activities, then we shall have the right to restrict the access to and/or disconnect you and/or your Users in question from the affected Services, and if necessary from the entire Service, from our network or our Service Provider's network, products and services. If we disconnect you or any of your Users we will notify you as soon as reasonably practicable in the circumstances. Notwithstanding the foregoing, if the Prohibited Activity is in our reasonable opinion serious or fraudulent (including without limitation where it has a direct or indirect impact on the experience of other customers of us or on our Service Providers), we may suspend immediately and without prior notice, the provision of the Services to you or to any of your Users, or restrict the access to and/or disconnect you and/or your Users in question from the affected Services, until such time as the Prohibited Activities have ceased. If this happens we will notify you as soon as reasonably practicable in the circumstances.
- 4.7 If we reject any information you provide to us for a valid reason, it is your responsibility to correct and re-submit the correct information to us in the manner reasonably specified by us.
- 4.8 You or your Users do not own any number or have any right to sell the number(s) related to any Service.
- 4.9 You are responsible for terminating, at your own expense, any contracts you may have with your previous suppliers for services similar to our Services or which are not compatible with our Services. You, are solely responsible for any liabilities you may incur when you terminate the agreements with them.
- 4.10 You acknowledge that Services are provided to other customers and that we owe a duty to these users as a whole to preserve our network integrity and avoid network degradation. If, in our reasonable opinion, we believe that your use (or your Users' use) of the Services has or may adversely affect such network integrity or may cause network degradation we may manage the transmission speed, the type of traffic you or your relevant User is passing, and/or suspend the relevant Service. Furthermore, if we detect hacking attempts emanating from your IP, we reserve the right to block your IP address from our network.
- 4.11 You will fully indemnify and hold us harmless against all losses, damages and amounts (including legal fees), suffered or incurred by us arising out of or in connection with any actual or potential claims, legal and regulatory proceedings and fines against us by a third party, resulting from your use (or your Users' use) of the Services in breach of your obligations under this Clause 4. We will notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.
- 4.12 We will also require you to reimburse us for any reasonable and foreseeable losses, costs

and expenses which we incur as a direct result of the misuse of the Services either by yourself, by your Users or by someone you have knowingly allowed to use the Services we provide to you.

- 4.13 You shall ensure that your Users comply with, all applicable legislation, regulations codes of practice, guidance and other requirements of any relevant government or governmental agency and with all our reasonable policies and procedures.
- 4.14 You, are responsible for the repair and maintenance of Customer Equipment.
- 4.15 You shall ensure that the Customer Equipment must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards. We reserve the right to disconnect any Customer Equipment if you do not fulfil your obligations under this Clause or if, in our opinion, such Customer Equipment may cause the death or personal injury to any person or damage to property or materially impairs the quality of any telecommunications service.
- 4.16 In the event that we request the disconnection of a Customer Equipment, or of a User from all or part of a Service, you shall timely cooperate with us and comply with our request.
- 4.17 You shall be responsible for insuring, against all loss of or damage to data stored on or transmitted using the Services.
- 4.18 If you use Services from a country outside the UK, your use of the Services may be subject to laws and regulations that apply in that country. We are not liable for your failure to comply with those laws or regulations.

5 Software

- 5.1 Where we provide software to you to enable you to use the Services, including backup and computer security services where applicable ("**Software**"), we grant you a non-exclusive, non-transferable, revocable licence to use the Software for the purposes of these Terms and Conditions and, and to make the Software available to your Users, solely for the Term and the purposes of these Terms and Conditions. You acknowledge and affirm that you, and your Users, use this Software at your own risk. You agree to use the Software in accordance with its applicable end user license agreement, which you, and your Users, will be required to accept in order to install the Software.
- 5.2 Any Software provided to you or to your Users as part of the Services is provided for your use, and your relevant Users use, only. You must not (and shall ensure that your Users do not) re-sell, rent, transfer, assign or sub-license the Software to anyone else. You may not (and shall use reasonable endeavours to ensure that your Users do not) adapt, transmit, distribute externally, play or show in public, broadcast or publish any part of the Software. Except as permitted by applicable law or as expressly permitted under these Terms and Conditions you must not (and shall ensure that your Users do not) copy, de-compile or modify the Software (in whole or in part), or copy the manuals or documentation (in whole or in part).
- 5.3 We may offer updates or modifications to the Software or documentation and we will notify you of any applicable Charges for such updates or modifications at the time we offer them to you.

6 User Names and Passwords

- 6.1 You shall procure that you and any Users with access to the Services are authenticated and where required are provided with a unique user name and secure password in order to access any part of the Services.
- 6.2 You must ensure that user names and passwords used in connection with the Services are kept confidential and are only used by authorised Users. You shall implement, and request your Users to implement, safety measures to prevent and detect

any unauthorised use of user names and passwords and inform us immediately if you know or suspect that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way.

- 6.3 We reserve the right (at our sole discretion):
- (a) to suspend user names and password access to the Services if at any time we think that there has been or is likely to be a breach of security;
 - (b) to ask you to change any or all of the usernames and passwords you (our you Users) use in connection with the Services; and
 - (c) restrict access to the Service Portal.
- 6.4 You must inform us immediately of any subsequent changes to the information you supply to us when you register for the Services (or register a User for the Services).
- 6.5 You acknowledge and affirm that the Services, including but not limited to internet related Services, are not secure and we do not guarantee the prevention or detection of any unauthorised attempts to access the Services.
- 6.6 You, or your Users as applicable, shall be liable for any unauthorised use of user names and passwords by third parties if this use is due to you or your Users failing in keeping them confidential or in implementing reasonable safety measures to prevent and detect any unauthorised use of user names and passwords.

7 Equipment

- 7.1 We may provide you with Equipment as part of any of our Services or sell equipment to you.
- 7.2 Any Equipment we provide to you or any other equipment we sell to you is designed for use with the relevant Services in accordance with the Terms and Conditions.
- 7.3 We shall bear the risk of loss or damage to the Equipment, or any other equipment we deliver to you, until the point of delivery to you. You shall bear the risk of loss or damage to Equipment, or any other equipment we deliver to you, from the time of delivery to you.
- 7.4 The Equipment will at all times remain our property (or the property of our sub-contractors as applicable) or, if provided by a Service Provider, of that Service Provider unless otherwise agreed in writing.
- 7.5 You shall (and ensure that your Users shall):
- (a) ensure that the Equipment is used only for the purposes of the Services;
 - (b) not connect any other equipment to the Equipment except as expressly authorised in writing by us;
 - (c) not tamper with or remove any label on the Equipment;
 - (d) not open, disconnect, repair, maintain, modify or remove the Equipment; and
 - (e) permit us and/or any Service Provider to modify, change, add or replace the Equipment or any part of the Equipment timely;
- 7.6 You will not sell the Equipment nor permit any lien, charge or other like restriction to be placed on the Equipment.
- 7.7 We may take possession of the Equipment from the Premises at any time or take other reasonable steps which we reasonably believe are necessary to protect our, or the Service Provider's, ownership rights in the Equipment.
- 7.8 You shall not do anything that may damage or affect the operation of our network or our

Service Provider's network and/or Equipment.

7.9 You will fully indemnify and hold us harmless against all losses, damages and amounts (including legal fees), suffered or incurred by us or arising out of or in connection with any actual or potential claims, legal and regulatory proceedings and fines against us by a third party, resulting from damage to the Equipment or our network or our Service Provider's network which is caused by:

- (a) an act or omission of you or any of your Users;
- (b) malfunction or failure of any Customer Equipment adversely affecting the Equipment, the our network or our Service Provider's network.

We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.

8 Customer Equipment

8.1 You must only use (and shall ensure that your Users only use) Customer Equipment which is lawfully approved for connection and approved by us.

8.2 You will ensure that any Customer Equipment you or your Users connect to the Services is in proper working order and complies with all applicable standards and approvals for connection to the telecommunications network.

8.3 You shall ensure that any Customer Equipment you, or your Users, use in connection with the Services must be:

- (a) technically compatible with the Services and must not harm our Equipment, our (or our Service Provider's) network or other user's equipment (or our Service Provider's equipment);
- (b) connected by you using the applicable network termination point (in accordance with standard industry practice and with our instructions); and
- (c) adequately protected by you against viruses and other breaches of security.

8.4 If you or your Users choose to use Customer Equipment for any of our Services, we will not be liable for any faults or associated costs associated with the Customer Equipment. You acknowledge and agree that we shall not be responsible for the configuration, repair and maintenance of the Customer Equipment.

9 Content

9.1 Where the Service allows access to the internet you understand and affirm that the use of the internet is at your (or your Users) own risk.

9.2 You warrant that any information you make available on your Website, both yours or that of a third party, is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

10 Intellectual Property Rights

10.1 All title, interests and rights, patents, design rights, know-how, copyrights, trademarks, and all other similar intellectual property proprietary rights (whether registered or unregistered) worldwide relating to the Services, including but not limited to Internet Telephony Services, Fixed Lines and Connectivity Services, or arising during the development of the Services ("**Intellectual Property Rights**"), belong to us or remain with us and/or our suppliers. You acknowledge and affirm such title, interest and rights and you shall not take any action to jeopardise, limit or interfere in any manner with our (or any third party supplier's) title, interests or rights with respect to the Services including but not limited to Intellectual Property Rights.

10.2 You acknowledge that you have no right, title or interest in our trade names and trademarks (or in the trade names and trademarks of our Service Providers) and you shall not use them for any purposes unless we agree otherwise with you in writing.

11 Repairs to the Services

11.1 We will use reasonable endeavours to provide an uninterrupted service, but you acknowledge and agree that from time to time Incidents may occur, including faults (such as intermittent faults) which may recur and have no identifiable cause.

11.2 We will try to address Incidents, which we are responsible for, quickly when reported to us..

11.3 We are not responsible for faults on, or caused by:

- (a) Customer Equipment. If we (or our sub-contractors) are called out and find the fault is with, or is caused by, Customer Equipment, by you or your Users you will have to pay our Charges at our then current rates; or
- (b) misuse or neglect of or accidental or willful damage caused by you or your Users; or
- (c) failure by you to comply with any of the provisions of these Terms and Conditions.

11.4 You must exhaust all investigative analysis prior to sending Incident Reports to us. It is your obligation to prove that Incidents reported to us are within our control and responsibility.

11.5 We will quote an incident reference number when you send us an Incident Report.

11.6 You shall provide us with a minimum level of information when you send us an Incident Report (to enable us to timely and efficiently diagnose and resolve the Incidents). This includes but is not limited to:

- (a) contact name and details of the person reporting the Incident;
- (b) Incident description;
- (c) how many Users have been affected and how long the Incident has been active;
- (d) details of any tests/diagnosis you carried out in attempting to localise the problem before reporting to us;
- (e) availability of access and access information to the Premises for engineering staff; and
- (f) Service (and/or circuit) reference and Premises details.

11.7 We may not be able to process the Incident if you are unable to provide the necessary information us or if the information you send it incorrect. In this event, the Incident will not be logged until the necessary information is provided by you or the Incident ticket will be stopped and will be reset, when the correct information is received by us.

12 Repairs to the Equipment

12.1 Unless we say otherwise in writing, if we send an engineer to your Premises on your request to check any faulty equipment or Equipment you will be responsible for the engineer call out Charge.

13 Allocation and Number Portability

13.1 If any Service we agree to provide to you requires the use of numbering, we will use reasonable endeavours to provide number portability to you, as soon as reasonably practicable and on reasonable terms, provided that:

- (a) there are no technical or physical reasons preventing the portability of the number(s) requested by you;
- (b) you undertake to pay our Charges for such number portability if applicable; and
- (c) your existing provider agrees to release the number,

If it is not reasonably practicable, we will provide you with a new number(s).

13.2 Any telephone numbers allocated to you by us (if any) or to your Users do not belong to you or to your Users. You accept that neither you nor your Users (and you shall ensure that you inform your Users on this regard) will acquire any rights whatsoever in such telephone numbers and you must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style. You are not entitled, and you shall notify your Users that they are not entitled, to sell or agree to transfer to a third party any telephone number allocated to you by us.

14 Access to the Premises

- 14.1 When a Service requires attendance at the Premises by our support personnel, you will be responsible for organising appropriate access to the Premises.
- 14.2 We or our suppliers, agents or subcontractors will comply with the reasonable policies or regulations applicable in the Premises provided that you notify us in writing of such policies and regulations reasonably in advance.
- 14.3 You shall provide a safe and suitable working environment for our employees, agents, suppliers or subcontractors at the Premises at all times. You shall provide safety insurance to cover our employees working in the Premises, with a reputable insurance company and shall produce evidence of such to us on request.

15 Liability

- 15.1 Nothing in these Terms and Conditions shall exclude or restrict a Party's liability for matters which cannot by law be excluded or restricted. Nothing in these Terms and Conditions limits or excludes your liability to pay the Charges (or any amount owed by you under these Terms and Conditions) or each Party's liability for: (i) death or personal injury resulting from negligence of that Party; (ii) fraud or fraudulent misrepresentation; (iii) any other liability which cannot be limited or excluded by applicable law. However, nothing in this Clause gives a Party any right or remedy which it would not otherwise have.
- 15.2 Subject to Clause 15.1 we shall not be liable under, or in connection with, these Terms and Conditions for:
 - (a) loss of income;
 - (b) loss of business profits or contracts;
 - (c) business interruption;
 - (d) loss of the use of money or anticipated savings;
 - (e) loss of information;
 - (f) loss of opportunity, goodwill or reputation;
 - (g) loss of, damage to or corruption of data;
 - (h) any loss or damage that is not foreseeable by us;
 - (i) cost of procurement of substitute goods or services; or
 - (j) any indirect, special or consequential loss or damage of any kind howsoever arising

and whether caused by tort (including negligence), breach of contract or otherwise or, whether any such losses could be reasonably foreseen by us or not or if even if we have been advised of the possibility of such damages.

Each of the Sub-clauses 15.2(a) to 15.2(j) shall be deemed to be independent of the others.

- 15.3 Subject to Clause 15.1, our entire liability to you in contract, tort (including negligence) or otherwise arising out of or in connection with these Terms and Conditions shall be limited in respect of any one incident, or series of connected incidents, to the lesser of (a) £5,000 or (b) 100% of the Charges paid by you for the affected Services in the 6 months preceding the event or circumstances giving rise to such liability.
- 15.4 If the event that we offer to you a Service Level Agreement in connection to any of the Services we provide to you, and such Service Level Agreement includes service credits, our liability to you for failure to provide the Service in accordance with the relevant Service Level Agreement shall be limited to the credits (amounts) payable to you under the same.
- 15.5 We shall have no liability to you in respect of any fraud perpetrated by you and/or your Users, or any third party, howsoever occurring (save for any fraud perpetrated by us). You shall pay any Charges incurred through the Services if the Services are used by you, your Users or by any authorised or unauthorised third parties (even in the event of fraud, or other improper use of the Services such as hacking of the Services by third parties). Upon receiving a notice in writing from you, we shall use reasonable endeavours to prevent any unauthorised or fraudulent use of the affected Services as soon as reasonably practicable and we reserve the right to suspend the affected Services immediately.
- 15.6 You shall use reasonable endeavours to ensure that the Services you order meet your requirements. We shall not be liable for any loss which is suffered or costs which are incurred as a result of Services not meeting your requirements.
- 15.7 We shall not be liable for the consequences of any incorrect information you supplied in relation to the provision of the Services.
- 15.8 You acknowledge and accept that our directors, employees, members of staff, agents, sub-contractors, licensors, and suppliers (which includes without limitation our Service Providers) shall have the benefit of the limits and exclusions of liability set out in this Clause and Clause 16 and any other exclusions or limitations of liability under these Terms and Conditions, including without limitation in terms of the Contracts (Rights of Third Parties) Act 1999.
- 15.9 Subject to clause 15.1, we shall have no liability to you in contract, tort (including negligence) or otherwise arising out of or in connection with this End User Terms and Conditions unless you shall have served notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) to us within 6 months of you becoming aware of the circumstances which gave rise to such claim.
- 15.10 To the maximum extent permitted by law, we shall not be liable for loss or damage suffered by you as a result of you (or your Users) failing to test the Equipment within 30 days of delivery.
- 15.11 You shall indemnify us against any and all losses suffered directly and/or arising from any claims and associated costs damages or expenses made by any third party as a consequence of any act or omission by you and/or any of your Users in relation to these Terms and Conditions.

16 Warranties and Representations

- 16.1 Other than as expressly set out in these Terms and Conditions and to the greatest extent permitted by law, we make no representations or warranties with respect to the Services, or the performance of our obligations hereunder, and expressly exclude such representations and warranties, whether implied, statutory or otherwise to the maximum

extent permitted by law.

16.2 In particular, but without prejudice to the generality of this Clause 16, you acknowledge and accept that:

- (a) we do not warrant the Services against unauthorised interruption or interception by third parties or that the Services will be available to you error-free, at any particular time or continuously; and
- (b) the quality and coverage of the Services depends on both the telecommunications network to which you are connected and also on other telecommunications networks to which the person you are calling is connected.
- (c) the services might be adversely affected by circumstances beyond our control. We are not responsible for any loss of or disruption to the Services due to failure of a carrier network, broadband provider or internet service provider, which is not under our control, to the maximum extent permitted by law.

16.3 While certain precautions have been taken to detect computer viruses and ensure security, we do not warrant that our Services are virus-free and secure. To the maximum extent permitted by law, we shall not be liable for any loss or damage which occurs as a result of any virus or breach of security.

16.4 You shall be responsible for adopting appropriate security measures to protect your computer systems. We shall not be liable to you for any loss or damage that you suffer as a result of any virus or other malicious software in your computers or computer systems or network as a result of your use of the Services.

16.5 We do not warrant that our Services will be compatible with your computer systems, software and/or hardware.

17 Suspension of the Services

17.1 We may suspend, disconnect or restrict any of the Services or access to the Services to any of your Users (without being liable to compensate you):

- (a) in the event of a local or national emergency;
- (b) to comply with a request from a government or other competent authority;
- (c) to protect or provide services to rescue or other essential services or otherwise;
- (d) to maintain the quality of our Services and/or those of our suppliers;
- (e) if you fail to pay any amount due to us. We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid or you do not have enough credit in any pre-pay Service. You acknowledge and accept that, notwithstanding our suspension of the Service, we may continue to incur expenses and/or charges of our Service Providers (including rental charges) which shall be payable by you;
- (f) if an event affecting our ability to provide the Services occurs which is beyond our reasonable control;
- (g) if we have good reason to suspect fraudulent activity or misuse of our Services, the Equipment or any other materials;
- (h) if you (or any of your Users) do anything (or allow anything to be done) which we think (acting reasonably) may damage or affect the operation of any of the networks;
- (i) if you or your Users prevent or delay any prearranged maintenance from being carried out; or
- (j) if we reasonably believe that any of the Services we provide to you is being used by

you or by any of your Users to carry out Prohibited Activities or if we need to comply with a request from a Service Provider for this reason (this applies even if you are unaware that the relevant Service is being used in such a way).

In the case of suspension, we will give you as much advance notice as is reasonably practicable in the circumstances.

- 17.2 We may suspend the Services including during scheduled periods of downtime where necessary for operational reasons (connected to us or to our suppliers) such as repair, maintenance or improvement of the Services (or software connected to the Services) or because of an emergency. We will restore the Services as soon as we reasonably can after suspension.
- 17.3 If we suspend the Service under these Terms and Conditions because of your breach of these Terms and Conditions you shall reimburse any costs and expenses reasonably incurred as a result of such suspension and/or the Services being reinstated.
- 17.4 If we choose to suspend the Service this will not prevent us from also taking other actions under these Terms and Conditions or otherwise or to terminate these Terms and Conditions under Clause 18 below.

18 Termination

- 18.1 We shall be entitled to terminate these Terms and Conditions immediately if:
- (a) you do anything (or allow a third party to do anything) which we reasonably believe it could damage or affect the operation of our network (or our suppliers' or other third party networks);
 - (b) you breach any of your obligations under Clause 4 (Your Use of the Services), Clause 7 (Equipment), and Clause 10 (Intellectual Property Rights) of these Terms and Conditions.
- 18.2 In the event that we or you terminate a Service, Clause 19 below shall apply as it relates to the terminated Service and the rest of these Terms and Conditions will remain in force as it relates to the Services not affected by this termination.

19 Effects of Termination

- 19.1 On termination of these Terms and Conditions:
- (a) all the Services shall be terminated;
 - (b) any licence granted to you by us or by our licensors shall immediately cease, and you must immediately stop using the Services;
 - (c) You shall, at our sole discretion:
 - (i) promptly after termination of these Terms and Conditions (and in any event within 3 Business Days of receiving our request), give us and/or our relevant Service Providers, access to, and all reasonable assistance, to remove the Equipment from the Premises; or
 - (ii) return the relevant Equipment to us at your own cost. If you (or your Users) do not return the Equipment in good working condition (fair wear and tear excepted) or do not return the Equipment at all, then you may be charged for the Equipment at our then current Charges (or if these Charges are not specified, you shall pay to us an amount equal to the full market replacement value of the Equipment); and
 - (d) unless these Terms and Conditions states otherwise, we may delete your content and data (including any emails stored on the relevant Services). You are responsible for arranging a back-up of such content and data.

- 19.2 Save as expressly set out in these Terms and Conditions, termination of these Terms and Conditions shall be without prejudice to any other rights or remedies a party may be entitled to under these Terms and Conditions or at law and shall not affect any statutory or accrued rights or liabilities of either party.
- 19.3 The termination of these Terms and Conditions for whatever cause shall not affect any provision of these Terms and Conditions which is expressed or by implication intended to survive or operate in the event of termination of these Terms and Conditions

20 Data Protection

- 20.1 You shall comply with any applicable Data Protection Legislation including the Data Protection Act 1998.
- 20.2 We may pass and share your personal information to our Service Providers, other communications service providers and network service providers for the detection and prevention of theft and fraud, and to carry out any activities or disclosures to comply with any regulatory, government or legal requirement.
- 20.3 If you use the Services from a country outside the UK it may be necessary to transfer your information to that country. If that country is outside of the EEA, the treatment of your personal information may be subject to laws and regulations applying in that country and which may not protect your information to the same standards applying in the UK and the EEA.

21 General Provisions

- 21.1 The Parties acknowledge and agree that:
- (a) The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in these Terms and Conditions or for any breach of any representation not contained in these Terms and Conditions unless such misrepresentation or representation was made fraudulently.
 - (b) Except as expressly set out in these Terms and Conditions all warranties, representations or agreements, with respect to the provision of the Services or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law.
- 21.2 These Terms and Conditions are personal to you and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under these Terms and Conditions unless we agree otherwise in writing at our sole discretion.
- 21.3 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable to give effect to the commercial intention of the Parties. Notwithstanding the foregoing, if any part, term or provision of these Terms and Conditions is held to be illegal or unenforceable the validity or enforceability of the remainder of these Terms and Conditions will not be affected.
- 21.4 No failure or delay by a Party to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.5 these Terms and Conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

- 21.6 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions or its subject matter or formation (including non-contractual disputes or claims).
- 21.7 Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- 21.8 These Terms and Conditions are entered into by us for the benefit of us and our Service Providers. For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is intended that our Service Providers will have the right to enforce any rights conferred on it under these Terms and Conditions and to that extent our Service Provider will have the same rights against you as would be available if they were a party to these Terms and Conditions.
- 21.9 We may:
- (a) make changes to these Terms and Conditions, change or withdraw some, or part, of the Services from time to time. This may be because of commercial reasons, changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content. In the event that we make changes to these Terms and Conditions that are likely to cause a material detriment to you we will notify you and you will be entitled to terminate these Terms and Conditions within 30 days from receipt of our notification. In order to ensure continuity, time will be of the essence for your notice to be received by us and if we have not received your notice within that time, you will be bound by the terms of these Terms and Conditions as varied.
 - (b) also determine how Services are presented and delivered to you or are otherwise made available to you. We can change the way the Services are presented, delivered or otherwise made available to you at any time.
- 21.10 Definitions:
- (a) "**Charges**": means the charges payable by you for the supply of the Services in accordance with clause 3;
 - (b) "**Contract**": means the contract between us and you for the supply of Services in accordance with these Conditions;
 - (c) "**Customer Account**": means your business administrator account set up with us by you in the customer's area of the Service Portal with the features and functionalities designed by us;
 - (d) "**Customer Equipment**": means any equipment, including any software, for use with the Services that is not Equipment or equipment purchased or leased from us, and which is owned or controlled by you or by your Users;
 - (e) "**Data Protection Legislation**" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
 - (f) "**Equipment**": means any equipment owned or controlled by us placed on the Premises for the provision of the Services (including but not limited to the equipment provided by a Service Provider);
 - (g) "**Incidents**": means the loss or failure of any of the Services we provide to you, affecting Service performance or Service availability in a way that affects you (or

your relevant Users) business;

- (h) **"Incident Reports"**: means a notification of an Incident which is submitted by you to us in the way specified in the Terms and Conditions or in accordance with our instructions;
- (i) **"Fair Use Policy or Acceptable Use Policy"**: means our fair usage and acceptable usage policies available at [www.pbxhosting.co.uk];
- (j) **"Premises"**: means your premises in which we agree to provide the Services to you;
- (k) **"Prohibited Activities"**: has the meaning specified in clause 4.4;
- (l) **"Services"**: means the Services specified in the Service Order Form which we agree to provide to you;
- (m) **"Service Commencement Date"** means the date on which we first make a Service available for use under these Terms and Conditions;
- (n) **"Service Level Agreement"**: means any service level agreement we agree to provide to you as applicable;
- (o) **"Service Providers"**: means any person or company providing underlying or network facilities or software services to us in connection with the Services;
- (p) **"Service Portal"**: means a facility provided by us for certain Services where: (i) the relevant Services can be managed; and (ii) both your information and User's information can be entered and maintained for such Services;
- (q) **"Software"**: has the meaning specified in clause 5.1;
- (r) **"Term"**: means the duration of our agreement with you under these Terms and Conditions, during which we will provide the Services to you, until terminated in accordance its terms; and
- (s) **"Users"**: means the employees, directors, agents, sub-contractors or any other person who is authorised by you to use or access the Services;