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**Customer Service Descriptions  
and Terms and Conditions**

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## PART 1 – CUSTOMER SERVICE DESCRIPTION

### INTRODUCTION

This document sets out the service description and specific terms applicable to BLUE's range of services. These apply in addition to BLUE's Standard Terms and Conditions. These terms and conditions apply to new and existing customers and are effective from the implementation date shown above.

### 1. DEFINITIONS

In this service description, and in any agreement which incorporates this service description:-

**"Analogue Line Rental Service"** means the service specified in Clause 2;

**"BLUE"** means a trading name of the MDS Telecom Group Limited a limited company incorporated in England and Wales registered under number 04190159 whose registered office is at 52 The Ropewalk Nottingham NG1 5DW

**"Broadband Service"** means the services specified in Clause 6;

**"BT"** British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ, registered in England Number 1800000;

**"Call"** means any signal, message or communication which can be silent, visual (including text) or spoken;

**"Call Service"** means the facility to make a Call from a given Telephone Number over a given Line as detailed in Clause 4;

**"Channels"** means in relation to an ISDN Line a 64 k/bits circuit switched channel for customer use. A channel is capable of carrying voice or data telephony as a digital signal at 64k/bits;

**"CPS"** or **"Carrier Pre-Selection"** means a facility whereby defined classes of Call are carried by an operator other than BT or any other physical network owner without having to dial a routing prefix or follow any other different procedure to invoke such routing;

**"CPS Calls"** means in relation to any Call Services provided using CPS:-

- (a) generally, the range of Calls which may be made using CPS as specified in any applicable industry documentation;
- (b) specifically, the sub-set of such range of Calls selected by the Customer to be carried by BLUE using CPS, if not all;

**"Contract"** means the contract between BLUE and the Customer which incorporates this Customer Service Description;

**"Customer"** means the person who is party to this Contract with BLUE;

**"Customer Service Description"** means this document setting out the terms applicable to each type of service provided by BLUE;

**"DSL"** means a digital subscriber line (whether synchronous or asynchronous);

**"Exchange"** means any exchange or other point of presence on a Network;

**"General Conditions of Entitlement"** means the general conditions set from time to time under Section 45 of the Communications Act 2003;

**"ISDN Line Rental"** means the service specified in Clause 3;

**"Indirect Access"** means a service whereby Calls made from a given Telephone Number and Line are carried by BLUE by prefixing an access code to initiate the Call;

"**ISDN**" means integrated digital subscriber network;

"**Line**" means:-

- (a) generally a physical link between any specific premises and a local Exchange on a Network, providing access to that Network, whether by wire, optical cable or radio, and/or any connection to a Network facilitated by that physical link including any analogue, ISDN or DSL connection or channel;
- (b) specifically, the Line to be provided under any Service;

"**Network**" means:-

- (a) generally a public switched telecommunications network, digital network, circuit switched, packet switched, or other telecommunications network as applicable to any Service;
- (b) specifically the Network to which any Line is to be provided or over which any other Service is to be provided as part of the Services;

"**Network Operator**" means BT and/or any other Network operator from whom BLUE procures any Line or any other Service, whether directly or through any chain of resellers, and if BLUE procures any Line from a reseller, then this term shall in all such cases refer to both BT and any resellers;

"**Number Portability**" means the ability of customers to keep their Telephone Numbers when they change operators, in accordance with the General Conditions of Entitlement and any other industry documentation;

"**Premises**" means the premises to which any Line is to be provided as part of any Services;

"**Product Literature**" means in relation to any Services any applicable product descriptions, handbooks and processes as published and amended from time to time by BLUE or in the case of any Third Party Service comprised in the Services, by any Network Operator;

"**PSTN**" means a public switched telecommunications network;

"**Service**" means generally a service as described in this Customer Service Description, and specifically any Service which the Customer has agreed to take from time to time under this Contract;

"**Special Rate Service**" means the 09xx and 08xx services specified in Clause 5;

"**Telephone Number**" means:-

- (a) generally any Telephone Number as defined in the General Conditions of Entitlement; and
- (b) specifically any Telephone Number in respect of which any Services are being provided, or which is allocated to the Customer for any Services,

in each case, including the calling line Identification number for that Telephone Number.

## 2. ANALOGUE LINE RENTAL SERVICE

The following descriptions shall apply to the BLUE Analogue Line Rental Service:-

### 2.1 Scope

The Analogue Line Rental Service comprises:-

- 2.1.1 the provision of an analogue Line connecting premises specified by the Customer to a PSTN. The PSTN will normally be that of BT, unless BLUE elects to use a PSTN of any other Network Operator. The Analogue Line Rental Service includes connection of service up to the Network Operator's network terminating equipment in the Customer's premises;
- 2.1.2 provision of any necessary wires and cabling for such Line and the installation of the Network Operator's terminating equipment at the Customer's premises, which remains the property of BLUE or the Network Operator, or use of any suitable existing wires and equipment already located at any premises;

- 2.1.3 the maintenance and repair of the Line;
- 2.1.4 the allocation of a Telephone Number to that Line;
- 2.1.5 the enabling of PSTN Calls to be received and made over that Line using the Telephone Number allocated to that Line, including from other operators using Indirect Access or Carrier Pre-Selection;
- 2.1.6 the provision of a Calls Service over the Line;
- 2.1.7 the provision of any Ancillary Services which are from time to time available from the Network Operator as detailed in any Product Literature, as Ordered by the Customer from time to time in accordance with Clause 2.9.

## 2.2 Minimum Periods

The Minimum Period for which the Analogue Line Rental Service shall be purchased under an Order shall depend upon the discount which BLUE agrees to give the Customer in relation to the rental charge against the BT Retail Price, as detailed below:-

<b>Discount</b>	<b>Minimum Period</b>
0%	12 months
Greater than 0% up to 15%	18 months
Greater than 15% and less than 25%	24 months
25% or greater	36 months

For these purposes the BT Retail Price is the BT retail rental charge for an equivalent product for a 12 month minimum period as set out from time to time in the BT price list and as varied from time to time by BT.

## 2.3 Product Literature

The Analogue Line Rental Service shall have the features and be provided in accordance with any applicable Product Literature, including those of the Network Operator.

## 2.4 Options

The Analogue Line Rental Service can be one of the following options, as selected by the Customer in this Contract:-

- 2.4.1 Residential PSTN Single line on NTE
- 2.4.2 Business PSTN Single Line on NTE
- 2.4.3 Business PSTN Single Line on NTTP
- 2.4.4 Business PSTN Multiline Aux on NTE
- 2.4.5 Business PSTN Multiline Aux on NTTP

as further detailed in the relevant Product Literature.

Business PSTN Multiline Aux are lines that are on the same premises and there is a link between the lines such that a single Telephone Number is applied to all lines for incoming calls and the calls are routed to any line within the group.

## 2.5 Limitations

The Analogue Line Rental Service will be subject to any limitations in any applicable Product Literature, including any limitations as to the range of incoming and outgoing Calls supported. The Analogue Line Rental Service is only available using an analogue direct exchange line which terminates on a PSTN network termination point, and where required the Customer must request that BLUE arranges for the installation of a line and network termination point.

## 2.6 Telephone Number

For each Telephone Number supported by or proposed to be used for the ISDN Line Rental Service following terms shall apply:-

### 2.6.1 Source of Number

The Telephone Number may be a new number allocated by BLUE, or may be one which is imported from another service provider under the Number Portability rules. The ability to import a number or retain an existing Telephone Number will be subject to any requirements of the Network Operator.

### 2.6.2 Ownership

The Customer does not own any Telephone Number, and subject to Clause 2.6.6, any Telephone Number may only be used for the duration of the Services.

### 2.6.3 No Disposal

The Customer may not sell, transfer or otherwise dispose of any Telephone Number without the consent of BLUE.

### 2.6.4 Ownership

The Line and all terminating equipment shall be and remain the property of BLUE and the Access Operator from whom BLUE procures the Line, and the Customer's rights shall be limited to the right to use the Line in accordance with the terms of this Contract.

### 2.6.5 Directory Entries

Each Telephone Number will be put in the appropriate business or residential phone directories maintained by BT or any other Network Operator, together with the Customer's details, and made available from any public directory enquiries service provided by the Network Operator, unless the Customer requests otherwise. Phone book entries will normally be a single entry per Telephone Number. A special entry may be requested in any phone books, but this will incur an additional charge. BLUE will arrange for BT or any other relevant Network Provider to provide a phone book to the Customer for their own local area.

### 2.6.6 Number Portability

Where the Customer terminates the Services, then the Customer will be entitled to Number Portability if the Customer is procuring the Services from another operator, but BLUE shall be entitled to recharge to the Customer any charges which it incurs, including with any Network Operator, in providing such Number Portability.

### 2.6.7 Code Number Changes

BLUE or any Network Operator may occasionally/for operational reasons, change the codes or the numbers allocated to a service, including where there is any national change to codes.

## 2.7 Restrictions

The Customer shall not be entitled to engage any person other than BLUE to carry outgoing Calls over a Line provided by BLUE under the Analogue Line Rental Service, and BLUE shall be entitled to be the exclusive carrier of outgoing Calls over a Line.

## 2.8 Routing & Delivery

BLUE shall have the exclusive right to decide and implement the routing of all outgoing Calls made over any Line. Billing for services shall be by the Company or a company nominated to carry out the function of billing.

## 2.9 Ancillary Services

The Analogue Line Rental Service will be the minimum service offered by the Network Operator and does not include any ancillary services which are separately charged by the Network Operator. If the Customer

wishes to take up any ancillary services available from a Network Operator, then this must be separately ordered by the Customer, and will be subject to an additional charge. Extra services include: Calling and Network Features, BT Operator Assistance 100 and 155, Directory Assistance 118xxx codes, Additional BT Phonebooks, Nuisance Calls Service, Indirect Access Call Barring, Outgoing Calls Barring, Messaging, Number Selection, service care options, Out of Area Lines, Presentation Number and Fixed Line SMS, and call diversion.

### 2.10 Service Level

The Analogue Line Rental Service will be provided with the standard fault handling, fault repair and response times provided by the Network Operator. If the Customer requires any enhanced service level then this must be ordered additionally from BLUE. In the case of BT this is the Standard Care service, as amended, which as at the date of this Customer Service Description operates during Working Hours (0800-1700 hours Monday-Friday excluding Public and Bank Holidays). BT aim to respond to a fault report received before 1700 hrs on one working day by the end of the next working day. Where a fault is reported outside normal Working Hours, the fault will be treated as if it has been reported at the beginning of the next working day. Work will only be carried out during Working Hours.

## 3. ISDN LINE RENTAL SERVICE

The following descriptions shall apply to any ISDN Line Rental Services:-

### 3.1 Scope

The ISDN Line Rental Service comprises:-

- 3.1.1 the provision of an ISDN Line connecting premises specified by the Customer to a Network. The Network will normally be that of BT, unless BLUE elects to use a Network of any other Network Operator. The ISDN Line Rental Service includes connection of service up to the Network Operator's network terminating equipment in the Customer's premises;
- 3.1.2 the provision of any necessary wires and cabling for such Line and the installation of the Network Operator's terminating equipment at the Customer's premises, which remains the property of BLUE or the Network Operator, or use of any suitable existing wires and equipment already located at any premises;
- 3.1.3 the maintenance and repair of the Line;
- 3.1.4 the allocation of a Telephone Number or Telephone Numbers (as permitted by the relevant Product Literature) to that Line;
- 3.1.5 the enabling of circuit switched voice and data Calls to be received and made over that Line using the Telephone Number(s) allocated to that Line, including from other operators using Indirect Access or Carrier Pre-Select;
- 3.1.6 the provision of a Calls Service over the Line;
- 3.1.7 the provision of any associated calling and network feature and other services which are from time to time available from the Network Operator as detailed in any Product Literature, as ordered by the Customer from time to time.

### 3.2 Product Literature

The ISDN Line Rental Service shall have the features and be provided in accordance with any applicable Product Literature, including those of the Network Operator.

### 3.3 Options

#### 3.3.1 ISDN2

For ISDN2, the ISDN Line Rental Service can be one of the following options, as selected by the Customer in this Contract:-

- (a) Digital Standard: - equivalent to BT's ISDN 2e Standard and supports Point to Multi-point working.
- (b) Digital System: - equivalent to BT's ISDN 2e System and supports Line Hunting and Point to Point working.
- (c) Digital Business: - equivalent to BT's Business Highway.

as further detailed in the relevant Product Literature.

### 3.3.2 ISDN30

For ISDN30, the ISDN Line Rental Service can be one of the following options, as selected by the Customer in this Contract:-

- (a) ISDN30e - A Primary Rate service delivering a 30 x 64kbit/s "B" Channels and a 64 kbit/s "D" Channel for signalling.
- (b) ISDN30 DASS - A Primary Rate service delivering 30 x 64 kbit/s "B" Channels and a 64 kbit/s "D" Channel for signalling, utilising DASS2. This is not available as new supply other than for the expansion of an existing system and will be limited to the capacity of existing bearers,

as further detailed in the relevant Product Literature. ISDN30 is available with a minimum of 8 channels with up to 30 channels. The name ISDN30 reflects the fact that each 2M/bits bearer delivers up to 30 by 64Kbps channels. A bearer is required for every customer regardless of whether the minimum number of channels is taken. Beyond 30 channels a new bearer is required. Additional channels can be provided on a per channel basis.

### 3.4 Minimum Periods

The Minimum Period for which the ISDN Line Rental Service shall be purchased under an Order shall depend upon the discount which BLUE agrees to give the Customer in relation to the rental charge against the BT Retail Price, as detailed below:-

<b>Discount</b>	<b>Minimum Period</b>
0%	12 months
Greater than 0% up to 15%	18 months
Greater than 15% and less than 25%	24 months
25% or greater	36 months

For these purposes the BT Retail Price is the BT retail rental charge for an equivalent product for a 12 month minimum period as set out from time to time in the BT price list and as varied from time to time by BT.

### 3.5 Limitations

The ISDN Line will have the number of Channels and ISDN/PSTN ports, and will support the number of Telephone Numbers as may be specified in any applicable Product Literature and as selected by the Customer. ISDN30 service can be provided from any digital telephone exchange, provided a 2Mbit port is available. The ISDN Line Rental Service will be subject to any other limitations in any applicable Product Literature, including any limitations as to the range of incoming and outgoing Calls supported.

### 3.6 Telephone Number

For each Telephone Number supported by or proposed to be used for the ISDN Line Rental Service the following terms shall apply:-

#### 3.6.1 Source of Number

The Telephone Number may be a new number allocated by BLUE, or may be one which is imported from another service provider under the Number Portability rules. The ability to import a number or

retain an existing Telephone Number will be subject to any requirements of the Network Operator.

### **3.6.2 Ownership**

The Customer does not own any Telephone Number, and subject to Clause 2.6.6, any Telephone Number may only be used for the duration of the Services.

### **3.6.3 No Disposal**

The Customer may not sell, transfer or otherwise dispose of any Telephone Number without the consent of BLUE.

### **3.6.4 Ownership**

The Line and all Terminating Equipment shall be and remain the property of BLUE and the Access Operator from whom BLUE procures the Line, and the Customer's rights shall be limited to the right to use the Line in accordance with the terms of this Contract.

### **3.6.5 Directory Entries**

Each Telephone Number will be put in the appropriate business or residential phone directories maintained by BT or any other Network Operator, together with the Customer's details, and made available from any public directory enquiries service provided by the Network Operator, unless the Customer requests otherwise. Phone book entries will normally be a single entry per Telephone Number. A special entry may be requested in any phone books, but this will incur an additional charge. BLUE will arrange for BT or any other relevant Network Provider to provide a phone book to the Customer for their own local area.

### **3.6.6 Number Portability**

Where the Customer terminates the Services, then the Customer will be entitled to Number Portability if the Customer is procuring the Services from another operator, but BLUE shall be entitled to recharge to the Customer any charges which it incurs, including with any Network Operator, in providing such Number Portability.

### **3.6.7 Code Number Changes**

BLUE or any Network Operator may occasionally/for operational reasons, change the codes or the numbers allocated to a service, including where there is any national change to codes.

## **3.7 Restrictions**

The Customer shall not be entitled to engage any person other than BLUE to carry outgoing Calls over a Line provided by BLUE under the ISDN Line Rental Service, and BLUE shall be entitled to be the exclusive carrier of outgoing Calls over a Line.

## **3.8 Routing**

BLUE shall have the exclusive right to decide and implement the routing of all outgoing Calls made over any Line.

## **3.9 Ancillary Services**

The ISDN Line Rental Service will be the minimum service offered by the Network Operator and does not include any ancillary services which are separately charged by the Network Operator. If the Customer wishes to take up any ancillary services available from a Network Operator, then this must be separately ordered by the Customer, and will be subject to an additional charge. Extra services include: Calling and Network Features, BT Operator Assistance 100 and 155, Directory Assistance 118xxx codes, Additional BT Phonebooks, Nuisance Calls Service, Indirect Access Call Barring, Outgoing Calls Barring, Messaging, Number Selection, service care options, Out of Area Lines, Presentation Number and Fixed Line SMS, back-up power supply, alternative and diverse routing, site assurance and call diversion, dual parenting.

## **3.10 Service Level**

The Analogue Line Rental Service will be provided with the standard fault handling, fault repair and response times provided by the Network Operator. If the Customer requires any enhanced service level then this must be ordered additionally from BLUE. As at the date of this Customer Service Description, BT offers, as its minimum included service level, Standard Care for existing Lines and new ISDN2 Lines and Prompt Care for new ISDN30 Lines.

#### **4. CALL SERVICES**

The following descriptions shall apply to any outgoing Call services (as viewed from the Customer's perspective) :-

##### **4.1 Scope**

The Call Service comprises the carrying of outgoing Calls made by the Customer from a specified Telephone Number and over a specified Line. BLUE offers two types of Call Service:-

###### **4.1.1 Line Independent Call Service**

This Call Service involves the carrying of Calls from a specified Telephone Number and over a specified Line, where BLUE is not the provider of the Line. This Call Service is available for Calls made using any line or connection to the BT Network supported by BT, including PSTN, ISDN2, Highway, Multi-Line, ISDN30, Featureline, FeatureNet and FeatureNet Embark.

###### **4.1.2 Line and Calls Service**

This Call Service involves the carrying of Calls from a specified Telephone Number and over a specified Line, where BLUE is also the provider of the Line.

##### **4.2 Minimum Periods**

The Minimum Period for which the Call Services shall be purchased by the Customer shall be:-

###### **4.2.1 Line Independent Call Service**

1 month.

###### **4.2.2 Line and Calls Service**

The Minimum Period applicable to the Analogue Line Rental Service of ISDN Line Rental Service for the Line over which Calls are carried.

##### **4.3 Product Literature**

The Call Service shall have the features and be provided in accordance with any applicable Product Literature, including those of BT.

##### **4.4 CPS and Indirect Access**

To the extent available and applicable Calls will be carried using Carrier Pre-Selection for all Calls which are capable of being carried using Carrier Pre-Selection, or any sub-set of such range of Calls which the Customer selects to be carried using CPS, or if not CPS, then by Indirect Access, for any Calls capable of being carried by Indirect Access. For the duration of network problems which preclude the routing of calls via BLUE the Customer may manually dial the 1280 prefix so as to use the BT network

##### **4.5 Types of Calls**

The range of Calls which are available for the Call Services are as set out in any Product Literature, and in the case of CPS and Indirect Access, any applicable industry process documents. BLUE will provide the Customer with details of this on request.

##### **4.6 Requirement for a Line**

If BLUE is not the provider of the Line and Telephone Number used for any Call Service, under its Analogue or ISDN Line Rental Service, then the Customer is responsible for procuring and maintaining the Line and

Telephone Number over which the Call Service is to be provided, and the Call Service is only available where there is in connection with the Telephone Number a valid contract at a particular property (provided by BT or a third party) for the use of an analogue or ISDN direct exchange line which terminates on a master socket forming part of a Network.

#### 4.7 Ancillary Services

The Call Service will be the minimum service offered by the Network Operator and will include all services covered by that minimum services which are not otherwise separately charged for by the Network Operator. If the Customer wishes to take up any ancillary services available for any Call Service, then this must be separately Ordered by the Customer, and will be subject to an additional charge.

#### 4.8 Service Level

The Call Service will be provided with the standard fault handling, fault repair and response times provided by the Network Operator. If the Customer requires any enhanced service level then this must be ordered additionally from BLUE.

### 5. SPECIAL RATE SERVICES (NON-GEOGRAPHIC NUMBERS)

The following descriptions shall apply to any special rate non-geographic number services:-

#### 5.1 Scope

5.1.1 The Special Rate Service is a service whereby in respect of the following range of non-geographic Telephone Numbers, BLUE will route all incoming Calls made to those Telephone Numbers to the Customer's specified divert numbers or in accordance with any other call routing services agreed.

5.1.2 The number ranges in respect of which BLUE will provide Special Rate Services are:-

- (a) 0800/0808 : A free phone number where the caller incurs no charge.
- (b) 0844 : A number where the caller incurs no more than a fixed rate of 5p per minute, or such other figure set by BT.
- (c) 0845 : A number where the caller incurs no more than a charge at a Local Call rate from wherever they are calling the UK.
- (d) 0870 : A National Call number where the caller always incurs no more than a charge at a National Call rate.
- (e) 0871 : A number where the caller incurs no more than a fixed rate of 10p per minute, or such other figure set by BT.
- (f) 090 and 091 : A premium rate number where the caller incurs between 10p and £1.50 per minute, or such other figures as may be set by BT.

#### 5.2 Minimum Period

The Minimum Period for which the Special Rate Services shall be purchased by the Customer shall be 12 months.

#### 5.3 Product Literature

The Special Rate Services shall have the features and be provided in accordance with any applicable Product Literature, including those of BT.

#### 5.4 Charging

In the case of each number in the number ranges stated above there will be a fixed agreed charge, or a negotiated charge, or no charge, for each of the following items as detailed in the BLUE Charges:-

5.4.1 Cost per minute which BLUE charges to the Customer for incoming Calls made to the number.

5.4.2 A connection charge.

5.4.3 A monthly rental.

5.4.4 A cost per minute to persons making Calls to the Telephone Number.

5.4.5 A revenue share/retention, where BLUE pays to the Customer or the Customer may retain an agreed share of any Call charges paid by persons making Calls to the Telephone Number.

These figures will be agreed at the time of submission of any Order for Special Rate Services.

#### **5.5 Divert Number**

When ordering any Special Rate Services for a given Telephone Number, the Customer shall specify the divert number, which shall be an in-service geographic Telephone Number.

#### **5.6 Ancillary Services**

The Special Rate Service will be the minimum service offered by the Network Operator and will include all services covered by that minimum service which are not otherwise separately charged for by the Network Operator. If the Customer wishes to take up any ancillary services available for any Special Rate Service, then the Customer must order these separately, such as: time of day routing to different Divert Numbers, divert on busy, geographic routing, announcements, message facilities.

#### **5.7 Collection of Incoming Call Income**

Unless paid directly to the Customer, BLUE will receive all revenue from Calls made to the Telephone Number, and will pay this to the Customer after deduction of any revenue share which BLUE is entitled to.

#### **5.8 Service Level**

The Special Rate Service will be provided with the standard fault handling, fault repair and response times provided by the Network Operator. If the Customer requires any enhanced service level then this must be ordered additionally from BLUE.

### **6. BROADBAND SERVICE**

The following descriptions shall apply to any broadband access services to be provided under this Contract from time to time:-

#### **6.1 Scope**

The basic service is that BLUE will provide a DSL connection over the Customer's specified analogue Line which shall give the Customer internet access.

#### **6.2 Minimum Period**

The Minimum Period for which the Broadband Services shall be purchased by the Customer shall be 12 months.

#### **6.3 Product Literature**

The Broadband Service shall have the features and be provided in accordance with any applicable Product Literature, including those of BT.

#### **6.4 Availability**

Broadband Services are only available for Lines connected to an Exchange on a BT Network, and are subject to any applicable geographical and other technical limitations.

#### **6.5 Characteristics**

The DSL connection provided as part of the Broadband Service will be subject to the characteristics of the Line used for the DSL connection, and any access options available for such DSL connection, including as to upload and download speeds and contention ratios and data transfer limits

#### **6.6 Performance**

The performance of the DSL connection and any internet access will depend on a range of factors, including the characteristics of the DSL connection, level of contention, network congestion and internet congestion.

### 6.7 Customer Equipment

The Customer is responsible for supplying any modems, micro-filters and other equipment necessary to access and use the DSL connection, and it shall be the Customer's responsibility to configure and connect this equipment to any network termination point for the Line used.

### 6.8 ISDN Backup

Where the Customer's Customer has taken any ISDN backup option, BLUE will supply a configured ISDN backup router to the Customer. It is the Customer's responsibility to provide an ISDN line for exclusive use of the ISDN backup service. Any ISDN call costs incurred due to the activation of the backup service is the Customer's responsibility. BLUE can not guarantee that the ISDN backup service will initiate in all possible outage circumstances.

### 6.9 IP Addresses

Any Internet Protocol addresses provided in connection with the Broadband Service shall at all times remain BLUE's sole property. If this Contract is terminated for whatever reason, the Customer's license to use the Internet Protocol addresses shall automatically terminate and thereafter the Customer will not use such addresses.

### 6.10 Ancillary Services

The Broadband Service will be the minimum service offered by the Network Operator and will include all services covered by that minimum service which are not otherwise separately charged for by the Network Operator. If the Customer wishes to take up any ancillary services available, then this must be separately ordered by the Customer, and will be subject to additional charge. Particular ancillary services include:-

#### 6.10.1 Domain Name Hosting

If selected by the Customer, BLUE will host any domain name chosen by the Customer on domain name servers. The Customer agrees to take all steps needed to transfer the hosting of the domain name from any existing hosting company. The Customer shall also be responsible for monitoring and carrying out all renewals of that domain name, and for any charges levied for the registration, transfer or renewal of registration of the domain name.

#### 6.10.2 Email

If selected by the Customer, BLUE will provide:-

- (a) the number POP3 e-mail accounts ordered by the Customer from time to time, and the provision of an associated mailbox or mailboxes with capacity specified by BLUE or otherwise agreed with the Customer;
- (b) access to an STMP e-mail sending server.
- (c) the provision of virus scanning and spam filtering on incoming e-mails to such POP3 e-mail accounts.

This e-mail service may be accessed through appropriately configured e-mail software on the Customer's computer systems. The Customer will be responsible for obtaining and configuring its own e-mail software.

#### 6.10.3 Web Hosting

If selected by the Customer, BLUE will provide on a remotely hosted web server the agreed space and any agreed features, functions, databases for such web hosting.

### 6.11 Service Level

The Broadband Service will be provided with the standard fault handling, fault repair and response times

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provided by the Network Operator. If the Customer requires any enhanced service level then this must be ordered additionally from BLUE.

## PART 2 – CUSTOMER TERMS AND CONDITIONS

### INTRODUCTION

This document sets out the standard terms and conditions of MDS Telecom Group Limited, which shall apply to all agreements for the supply of telecommunications services and associated goods by MDS Telecom Group Limited, including line rental, calls, ISDN and broadband services. These terms and conditions apply to new and existing customers and are effective from the implementation date shown above.

### 1. INTERPRETATION

#### 1.1 Definitions

In these conditions, and in any agreement which incorporates these conditions:-

**"Activation Date"** means the switchover date or other date that any Services or any upgrades or changes to any Services are enabled or are otherwise live and available for use;

**"Affiliate"** means at any given time, any subsidiary or holding company of a party at that time or any subsidiary of any such holding company at that time, in each case at any level, and including for the avoidance of doubt any company which becomes such a subsidiary or holding company at any time after the commencement of this Contract;

**"Ancillary Service"** means in relation to any main line rental, calls, broadband access or other telecommunication service, any ancillary services or enhance which may be purchased in respect of such Services, which are dependent on the Customer purchasing the Core Services, including as detailed in any Product Literature and Customer Service Description;

**"Authorised Representative"** means an individual appointed as an authorised representative of a party in accordance with Clause 7;

**"BLUE"** means MDS Telecom Group Limited, a limited company incorporated in England and Wales registered under number 3925559 whose registered office is at Cumberland House, 35 Park Row, Nottingham NG1 6EE;

**"BLUE Website"** means the web site accessible through the domain name <http://www.BLUEtelecom.co.uk> and any other domain names or web site used by BLUE from time to time;

**"BT"** means British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ registered in England No. 1800000;

**"Call"** means generally any analogue call (whether voice, fax, modem or other), whether in-coming or out-going, and in relation the Services, any such call carried by BLUE as part of the Services;

**"Call Charges"** means BLUE's Charges for out-going Calls (as viewed by the Customer), and charges for in-coming Calls where chargeable to the Customer as part of any special rate/non-geographical number service;

**"Charges"** means any charges specified to be payable under this Contract, including:-

- (a) any Initial Charges, Periodic Charges, Usage Charges and other Charges specified or referred in this Contract, including in any Order, price list or other document forming part of or referred to in the contract;
- (b) any Third Party Charges (such as abortive visit charges) which BLUE is entitled to recharge to the Customer under this Contract;
- (c) any other charges specified to be payable under any term of this Contract;
- (c) any VAT chargeable by BLUE on any such amounts;

**"Contract"** means the contract which incorporates these terms and conditions, including any written

document (including web page order forms) which forms part of this Contract, as amended from time to time;

**"Conditions"** means BLUE's standard terms and conditions set out in this document;

**"Core Service"** means the main service to be provided by BLUE, as may be detailed in any Customer Service Description, including provision of any Line, carrying of any calls, or provision of any broadband internet access, being the basic or standard service, before any Ancillary Services;

**"Customer"** means the person who has entered into this Contract with BLUE;

**"Customer Equipment"** means any equipment which the Customer uses to access or use any Services, including any equipment which the Customer directly or indirectly connects to any Service Equipment;

**"Customer Premises"** means any premises to which any Line is to be procured, or at which any Service Equipment is to be installed, or at which any Services or Goods are to be provided, as may be changed from time to time under this Contract;

**"Customer Service Description"** means all descriptions, specifications and specific terms applicable to any particular type of Services as set out or referred to on the BLUE Website and/or in any other documents forming part of or incorporated into this Contract;

**"Consumer"** means a person who enters into any Contract other than in the course of a business;

**"Goods"** means any equipment to be supplied by BLUE as detailed in this Contract and/or any Order, including any modem, router, or micro filter;

**"Initial Charge"** means any Charge which is a set-up charge, connection or initial charge, including any Charge for initial provision of any Services or for any subsequent upgrade or change to any Services;

**"Line"** means, where applicable, any physical or virtual line, channel, or other connection to a telecommunications network to be procured and supplied by BLUE for any premises as part of the Services, including an analogue PSTN line connection, broadband connection, integrated digital subscriber line, leased line or other telecommunications line, link or connection to be procured and supplied by BLUE as part of the Services, so that Line refers to both the physical line or loop and any analogue or digital circuits, connections or lines carried over such physical line or loop;

**"Minimum Period"** means any minimum period for which the Customer agrees to purchase any Services as stated in this Contract or any Order, or any minimum period for which the Services must be purchased as stated in any terms forming part of this Contract;

**"Order"** means:-

- (a) the Customer's initial order for provision of any Services or Goods which the Customer initially requests and BLUE initially agrees to provide on first execution of this Contract;
- (b) any subsequent order from the Customer, whether in writing or oral, for any goods or services from BLUE that forms part of, incorporates, or is made under or subject to this Contract or these Conditions;
- (c) any subsequent request from the Customer for any change, upgrade, or cessation in relation to any Services or Goods provided under any existing Order;

**"Period"** means BLUE's default charging period of a calendar month, and in relation to any Periodic Charge, any other monthly, annual or other period of time for which that Periodic Charge applies;

**"Periodic Charge"** means any rental or other Charge which relates to a defined period of time, including monthly, quarterly and annual Charges;

**"Product Literature"** means in relation to any Services any applicable product descriptions, handbooks and processes as published and amended from time to time by BLUE or in the case of any Third Party Service comprised in the Services, by any Third Party Service Provider;

**"Services"** means (a) generally the range of service available to be provided by BLUE for resale by the Customer as stated in this Contract and any Customer Service Description, and (b) the specific services to

be provided by BLUE under each Order agreed from time to time under this Contract, including Core Services and Ancillary Services;

**"Service Equipment"** means (1) any wires, cables, and equipment (including any software) which needs to be installed on any Customer Premises, or on any other land between any Customer Premises and any exchange or other point of presence on any telecommunications network to provide a Line, and (2) any other equipment to be installed at any Customer Premises in order to provide or as part of any Services;

**"System"** means the telecommunications system or systems, including those of any third parties, over or through which any Services are provided by BLUE from time to time;

**"Third Party Charges"** means any charges which are payable directly or indirectly by BLUE in connection with any Third Party Services or otherwise to any Third Party Service Provider under any contract, including those charges detailed in any published price lists of BT or any other Third Party Service Provider, and including any connection and takeover charges, cancellation charges, line or product conversion charges, line transfer charges, shift and visit charges, change of number charges, labour and time charges, excess construction charges, and abortive visit charges;

**"Third Party Service"** means any telecommunications service provided by a third party which BLUE is directly or indirectly reselling as or as part of the Services or using which BLUE is providing the Services, and/or any part of the Services which BLUE sub-contracts, including the provision and installation of Lines and Service Equipment, the carrying of calls, broadband access, and any other telecommunications services, and any associated services and works provided by third parties;

**"Third Party Service Provider"** means any third party directly or indirectly provides any Third Party Service, including BT, any reseller or person in any chain of resellers from whom or through whom BLUE is purchasing all or any part of the Services for resale to the Customer, and any other person who is the access operator or ultimate provider of any telecommunications network, Lines or Service Equipment;

**"Usage Charges"** means any Charges calculated by reference to any actual or estimated quantities of usage by the Customer, including calls made or data transferred, except for any pre-purchased quantities included in any Periodic Charges, and including in particular charges for outgoing calls (as viewed by the Customer), and Call Charges;

**"Working Hour"** means 08:00 to 17:00 hours on any Working Day, or in the case of any Third Party Service, such other working hours as may be applied by BT or any other Third Party Service Provider; and

**"Working Day"** means Monday to Friday, excepting public holidays in England, Wales and Scotland.

## 1.2 Interpretation

In this Contract: headings are for convenience only and shall be disregarded when interpreting this Contract; a reference to a "person" includes any company, association, partnership or individual; a reference to the singular shall include the plural and vice versa; the expressions "holding company" and "subsidiary" have the meanings ascribed thereto by section 736 of the Companies Act 1985; "writing" includes printed, in electronic or digital form (such as e-mails or web pages and forms), and any other form which is read and is capable of storage; references to "including" are deemed to be followed by the words "without limitation".

## 1.3 Statutory Rights of Consumers

Where the Customer is a Consumer, then nothing in this Contract shall exclude or limit any of the statutory rights of the Customer, including any implied terms which may not be excluded as against a Consumer.

## 2. ORDERING AND SUPPLY

### 2.1 Agreement to supply and purchase

BLUE agrees to supply and the Customer agrees to purchase the Services and Goods, as detailed in each Order which the parties agree from time to time.

### 2.2 Applicable terms

Each Order shall form part of this Contract, and All Services and Goods are provided on and subject to (1) these Conditions, (2) any Customer Service Description, (3) any price lists of BLUE, and (4) any other written terms incorporated into this Contract. This Contract and these Conditions will also apply to any changes to or additional Services and Goods subsequently ordered by the Customer.

### 2.3 Requirement for Order

The Customer shall be obliged to submit Orders where it requires any Services or any change to or termination of any Services, and BLUE shall not be obliged to supply any Services unless the Customer has submitted an Order for those services which is accepted by BLUE.

### 2.4 Order Placement

#### 2.4.1 Range of Orders

The range of Orders which the Customer may place are Provision Orders, for the provision of new Services, Transfer Orders, for the transfer of the Customer from a third party to BLUE, Conversion Orders, to convert any Core Service from one Core Service to any alternative specified in the Service Description, Change Orders, to change any Services, Cancellation Orders, to cancel any Ancillary Services and Cessation Orders, to cease and terminate any Services (including all Ancillary Services).

#### 2.4.2 Process

The process and forms for submitting, verifying and agreeing Orders shall be as specified by BLUE from time to time.

#### 2.4.3 Information

In respect of each Order, the Customer shall provide any information specified by BLUE, including as a minimum any information specified in this Contract.

#### 2.4.4 Rejection

Any Order may be rejected where: there are in existence any incompatible telecommunications services in relation to the Services Orders, or any information in the Order is illegible, inaccurate, incomplete or incorrect or is a duplicate order.

### 2.5 Implementation

#### 2.5.1 Timescales and Procedures

BLUE agrees to implement any Services or any change to any Services, and deliver any Goods within reasonable timescales notified by BLUE, subject to any timescales of any Third Party Service Provider. All timescales are estimates only. The Services will be set-up and any Line and Service Equipment installed, in accordance with the standard procedures of BLUE and any third Party Service Provider, and the Customer shall comply with such procedures notified to it and co-operate with BLUE and any Third Party Service Provider.

#### 2.5.2 Surveys And Visits

A Third Party Service Provider may need to survey Customer Premises or carry out an engineering visit before agreeing any dates for the Services. The following terms shall apply:-

##### (a) Requirement

An engineering visit or a site survey (or both) will normally be necessary for any Services or change to any Services involving provision of a Line or any Services over a Line, including if the Customer requires a new or upgraded physical Line to be provided, or the Customer has an existing exchange line with a hard-wired telephone, or additional wiring work is required, or a conversion is required from one type of service to another, or the number of lines/circuits needs to be increased, or excess or special construction work is needed at any Customer Premises.

**(b) Works and Siting of Service Equipment**

Following any visit or site survey, BLUE or a Third Party Service Provider may specify requirements for works to be carried out at the Customer Premises for the provision of or change to any Service, Line or Service Equipment, including as to the routing of cables and wires and the positioning/relocation of outlets, sockets, and other apparatus constituting the Service Equipment. BLUE shall use its reasonable endeavours to comply with the Customer's reasonable requests in respect of installation of any Service Equipment, but the decision of BLUE and any Third Party Service shall be final and binding.

**(c) Timing**

The normal Working Hours for site visits are 0800 – 1700 on Working Days, or such other standard Working Hours as are applied by a Third Party Service provided from time to time. Additional Charges may be chargeable by BLUE if BLUE agrees to arrange for work outside of these hours.

**(d) Interruptions**

The Customer acknowledges that during the installation of any Service Equipment or the carrying out any other work in connection with the Services at any Customer Premises or elsewhere, any existing Lines and telecommunications services at the Customer Premises may suffer temporary interference, which shall be reinstated following such work.

**(e) Delays to activation**

If a site survey and/or engineering visit is required, or special or excess work needs to be carried out then the Services (or any change to them) may not be activated until completion of any survey and work.

**(f) Charges**

BLUE may make a Charge, and may recharge to the Customer any Third Party Charges which are made, in respect of any such visits or surveys and any work required carried out in order to provide any Services, including abortive visit charges and visit cancellation charges.

**2.6 Activation Date**

The Services and any change to any Services will commence on, and any associated Charges will commence on, the Activation Date notified by BLUE. Any provisional or proposed Activation Dates notified to the Customer are estimates only.

**2.7 Duration and Termination****2.7.1 General Duration**

All Services shall continue without limit of time until terminated in accordance with any term of this Contract.

**2.7.2 Minimum Period**

If the Customer has agreed to purchase any Services for a Minimum Period, or any other term of this Contract applies a Minimum Period to the Services, then the Customer may not terminate the Services before the end of that Minimum Period. If this Contract is terminated before the end of any Minimum Period then the Customer shall remain liable for the Charges for that Minimum Period, and the balance of the Charges which would have been payable for the remainder of that Minimum Period shall become payable immediately

**2.7.3 Non Fault Termination**

Subject to Clause 2.7.2, either party may terminate any Services under any Order by giving notice in writing to the other specifying the Order and Services to be terminated and the proposed date of

termination, which shall be at least 30 days from and including the date of service of the notice.

#### **2.7.4 Ancillary Services**

Subject to Clause 2.7.2, where any Services include the option of Ancillary Services, and the Customer Orders any Ancillary Services, then those Ancillary Services may be terminated on 30 days notice, independently of the Core Services, and if the Core Services are terminated then all Ancillary Services shall terminate also.

### **2.8 Cessation of Services**

Where any Services are terminated, the Services will terminate on the soonest date that BLUE is able to terminate the Services with any Third Party Service Provider. BLUE will use reasonable efforts to effect such termination by the termination date requested by the Customer, or as soon thereafter as is reasonably practicable, in accordance with any rights of termination BLUE has with the Third Party Service Provider, and the Customer shall continue to pay the Charges up to the date of actual cessation (except, in the case of BLUE default, for any Charges other than Call Charges and Usage Charges).

## **3. PROVISIONING TERMS**

### **3.1 General Standard**

BLUE will provide the Service with the reasonable skill and care of a competent telecommunications service provider, including determining how best to provide the Services at any applicable premises. Subject to the terms of this Contract, BLUE shall use all reasonable endeavours to maintain the Services 24 hours in every day on every day of the year but BLUE shall not be liable for any failure to maintain the Services whether this arises from a technical or other failure of the System or otherwise. BLUE does not warrant that the Services will be fault free or free of interruptions.

### **3.2 Product Literature and Customer Service Description**

The Services will be provided and shall be used in accordance with the Customer Service Description and the provisions of any applicable Product Literature, and all other reasonable instructions as may be notified by BLUE to the Customer from time to time.

### **3.3 Dates**

All dates and times for performance are estimates and BLUE has no liability for failure to meet any date or time. BLUE shall only be in breach if a date or time is not met, the Customer has given reasonable notice to BLUE requesting performance, and BLUE has failed to perform within a further reasonable time.

### **3.4 Characteristics of Lines**

Where any Line is to be provided under this Contract, the Line will have the characteristics specified by the Third Party Service Provider from time to time, and where there are any options, will have the options as to characteristics selected by the Customer and agreed with BLUE, including as to bandwidths, contention ratios, access times, and data transfer limits.

### **3.5 Goods Specification**

All Goods will be supplied in accordance with their description and their manufacturer's specification, and will be in working order.

### **3.6 Technical Limits**

The Services may be subject to technical limitations including: (1) technical limitations which may not become apparent until after any Line or Service has been installed and working for some time; (2) incompatibility between the Services and any other telecommunications services which the Customer is receiving or proposing to receive; (3) potential adverse effects on the performance of any Customer Equipment used with the Services; and (4) technical or geographical limitations that inhibit the installation of any Line or the provision of any Service over any Line. BLUE and any Third Party Service Provider shall have the right to decline to provide or to cancel or terminate any Services or any feature of the Service, or to

change the characteristics of the Services, without liability to the Customer, where any such technical limitations are identified. In addition the Customer shall have the right to cancel any Services before they are activated if any such technical limitations identified in any survey or visit would or may materially and adversely affect any Services.

### 3.7 Service Equipment

All Service Equipment and Lines remain the property of BLUE and/or any Third Party Service Provider at all times, and are provided on a rental basis only for the duration of the Services. BLUE and any Third Party Service Provider may modify, substitute, renew or add to any Line or Service Equipment from time to time at its absolute discretion.

### 3.8 Operational Suspensions and Changes

BLUE and any Third Party Service Provider shall, without prior notice, be entitled to suspend, or take out of use, interrupt or degrade any part of the Services or any Third Party Service or change the technical specification of the Services, where necessary for operational, statutory or regulatory reasons, including:-

- 3.8.1 replacement, maintenance, repair and upgrade;
- 3.8.2 rectifying any malfunction, fault or damage;
- 3.8.3 dealing with any emergency, risk to health and safety, or actual or suspected security breach;
- 3.8.4 taking any other action reasonably required for the provision of the Services;
- 3.8.5 in any other circumstances where the Third Party Service Provider has the right to do so in its contract with BLUE (unless due to a default by BLUE); and
- 3.8.6 to comply with any order, instruction or request of any government or governmental agency or authority, including OFCOM;

BLUE will work with the Third Party Service Provider to restore any Services as quickly as possible.

### 3.9 Fair Usage Policy

Where the Services consist of services using shared or contended networks or systems, BLUE and any Third Party Service Providers may implement a fair usage policy in relation to such services, to manage the bandwidth available to all users to ensure that all customers have a fair and reasonable share of available capacity.

### 3.10 Faults

#### 3.10.1 Notification

The Customer shall notify BLUE promptly of any faults or other problems experienced with any Services.

#### 3.10.2 Resolution

If the Customer reports a fault in the Service or any Service Equipment, BLUE will use all reasonable endeavours to resolve the fault itself, for its own systems, and with any Third Party Service Provider for any Third Party Service.

#### 3.10.3 Service Level

Faults will normally be handled in accordance with the fault handling procedures and standard service levels of each Third Party Service Provider, including as to response times and the hours and Days during which any faults will be worked on. However, if BLUE has agreed any enhanced level of Service in writing in this Contract, BLUE will respond with the level agreed with the Customer.

#### 3.10.4 Work outside normal Working Hours

BLUE and any Third Party Service Provider will only be obliged to work during their respective

normal Working Hours and Days, or within any extended hours and days agreed within this Contract (if any). BLUE may make a reasonable charge and may pass on any Third Party Service Provider charges, if the Customer wishes work to continue outside such normal Working Hours and Days.

### **3.10.5 No Fault Found/Customer Caused**

If the Customer reports a fault and BLUE or the Third Party Service Provider finds that there is no fault, or that the Customer has caused the fault, BLUE may make a reasonable charge to the Customer for any work, and may pass on any charges incurred with any Third Party Service Provider.

### **3.11 Online Billing Tools**

As part of the Service, BLUE will provide the Customer will access to any reporting, account management and billing applications provided through the BLUE Website.

### **3.12 Changes**

Any changes to any Services required by the Customer and agreed by BLUE, including changes of address, changes of Telephone Number, movement of any internal or external parts of any Line, conversion or transfer of Services to any new option, additional Lines and circuits, will be provisioned in accordance with the relevant procedures of any Third Party Service Provider and any Product Literature, and BLUE may recharge to the Customer any Third Party Charges it incurs as a result.

### **3.13 Third Party Services**

In relation to any part of the Services which is a Third Party Service:-

#### **3.13.1 Monitoring**

BLUE will use reasonable efforts to monitor and supervise the supply of such Third Party Service, but BLUE shall not otherwise be responsible for or liable for any malfunction, failure, poor-performance, non-operation, default, or non availability of such Third Party Service, unless due to BLUE's own negligence or default.

#### **3.13.2 Cease to be available**

If any Third Party Service ceases to be available at all or with the characteristics necessary to provide the Services, without suitable replacement, BLUE will notify the Customer, and both BLUE and the Customer shall have the right to terminate this Contract forthwith in respect of those Services.

#### **3.13.3 Change to Third Party Service Provider**

BLUE may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Services and re set-up. BLUE will meet any costs of a change to a Third Party Service Provider proposed by BLUE.

## **4. CUSTOMER'S GENERAL OBLIGATIONS**

### **4.1 Supply Information**

The Customer shall promptly provide any information required by BLUE or any Third Party Service Provider in connection with the Services, including information regarding the Customer's use of the Services, and information concerning any equipment which the Customer proposes to use in connection with the Services, including audodialler and call logging equipment. The Customer also agrees that BLUE and any Third Party Service Provider may obtain from any other Third Party Service Provider from whom the Customer has purchased any telecommunications services any information relating to the Customer and the products and services provided to the Customer where necessary to provide the Services.

### **4.2 Co-operation**

The Customer shall generally co-operate with BLUE and provide any assistance reasonably required by

BLUE or any Third Party Service Provider in relation to the provision of the Services and any work to be carried out at any Customer Premises as part of or in connection with the Services.

#### **4.3 Comply with BLUE's Instructions and Policies**

The Customer shall use the Services and ensure that the Services are used in accordance with and shall follow BLUE's general instructions, policies and guidelines in place from time to time, and those of any Third Party Service Provider, in relation to any Services or Goods, as notified to the Customer from time to time or set out on the BLUE Website, including any acceptable use policies. In addition BLUE, or any Third Party Service Provider may give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of the Service.

#### **4.4 Notification of Problems**

The Customer shall notify BLUE promptly of all enquiries or problems regarding technical and operational issues with the Services and System.

#### **4.5 Compliance with law and Misuse of the Services**

The Customer agrees that it will comply with all laws in relation to its use of the Services, including in relation to any activity, business or occupation carried out through or using the Services, and in relation to any data, information or other materials hosted, transmitted or otherwise processed using the Services. In particular the Customer shall not use and shall ensure that the Services are not used:-

##### **4.5.1 Criminal Activity**

for or in connection with any activity which would be criminal, fraudulent or otherwise unlawful under or in breach of any legislation or common law in any jurisdiction applicable to any use of the Services made by the Customer or activities or business of the Customer carried on through the Services;

##### **4.5.2 Improper Usage**

to send or make offensive, indecent, menacing, nuisance, fraudulent, defamatory, illegal or hoax calls, messages or other communications, or to send, knowingly receive, upload, download, or process any data, information or other materials which are immoral, offensive, abusive, fraudulent, indecent, defamatory, obscene or menacing, improper, or in a manner which may cause annoyance, inconvenience or needless anxiety;

##### **4.5.3 Reputation and Quality**

in a manner which (in the reasonable opinion of BLUE) brings the name of BLUE or any Third Party Service Provider into disrepute, or in a way that in BLUE's reasonable opinion could materially affect the quality of any Services or System;

##### **4.5.4 Breach of Third Party Rights**

to send, knowingly receive, process or host any data, information or materials in breach of any copyright or other right of any third party, or in breach of a confidentiality obligation;

##### **4.5.5 Unsolicited Communications**

to spam or, unless expressly permitted by law, to make or send or procure the making or sending of any unsolicited calls, advertising or other unsolicited communications, or to knowingly receive responses to any such unsolicited communications; or

##### **4.5.6 Special Instructions**

contrary to any special instructions given by BLUE or any Third Party Service Provider, including for reasons of health, safety or the quality.

BLUE and any Third Party Service Provider may disconnect any Service if the Customer is in breach of this Clause. BLUE will inform the Customer if is notified by any Third Party Service Provider that any such action is proposed to be taken.

**4.6 Password Security**

The Customer shall be responsible for maintaining the security of its passwords and security codes for accessing the Services.

**4.7 Intellectual Property Licence**

Where in connection with the Services, BLUE or any Third Party Service Provider is or will be required or involved directly or indirectly in the copying, reproduction, processing, publishing, republishing or hosting of any brands, logo, and/or trademarks, or any graphics, text, sound, data, works, or other materials, the Customer shall ensure that BLUE and the Third Party Service Provider have the necessary licences and permissions to do so.

**4.8 No Resale**

Unless expressly agreed in writing with BLUE, the Customer may not resell any of the Services, or use the Services to provide similar services to any third party.

**4.9 Third Party Service Terms**

The Customer shall be responsible for complying with any terms imposed on BLUE by any Third Party Service Provider applicable to the Services, as notified by BLUE to the Customer from time to time.

**4.10 Lines and Service Equipment**

Where any Services involve the provision of, change to or upgrade to, or any repair or other work in relation to any Line or any Service Equipment, then:-

**4.10.1 Preparation of premises**

the Customer shall prepare any Customer Premises in accordance with the reasonable instructions of BLUE or any Third Party Service Provider, including the taking up or removing of any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as BLUE or any Third Party Service Provider advises are necessary;

**4.10.2 Obtaining Consents**

the Customer shall obtain all necessary consents in relation to the installation of any Service Equipment at any Customer Premises, including for any necessary alterations to buildings, and obtain all necessary permissions to cross third party property or permission to put Service Equipment on third party property;

**4.10.3 Providing installation site**

the Customer shall provide a suitable place and conditions for the Service Equipment including connection points.

**4.10.4 Providing power**

the Customer shall provide a continuous mains electricity supply for the Service Equipment including electrical connection points in an accessible place immediately next to the Service Equipment, and shall provide any backup power supply where required by any Product Literature;

**4.10.5 Making good premises**

the Customer shall be responsible for putting items back, making good any Customer Premises, and any re-decorating work required, when any installation or other work is completed by BLUE or any Third Party Service Provider;

**4.10.6 Care for Service Equipment**

the Customer shall look after any Service Equipment, taking reasonable steps to ensure that nobody (other than someone authorised by BLUE) adds to, modifies or in any way interferes with it, and shall pay for any repair or replacement needed if it is lost or damaged, unless due to fair wear and

tear, or caused by BLUE or a Third Party Service Provider or anyone acting on their behalf;

#### **4.10.7 Removal**

the Customer shall permit removal of all Service Equipment and disconnection of any Line on termination of this Contract or any Service to which the Service Equipment applies unless with BLUE's permission or that of the Third Party Service Provider that owns the Service Equipment, the Service Equipment is allowed to remain in place;

#### **4.10.8 Access to the Customer Premises**

the Customer shall provide safe access to any premises where Service Equipment is installed, and a suitable and safe working environment, for BLUE and any Third Party Service Provider, and any anyone acting on their behalf, at all reasonable times, including for the purposes of installation, inspection, maintenance, replacement, upgrade, or removal of any Service Equipment or enabling or disabling any Line. BLUE and the Third Party Service Provider will meet the Customer's reasonable safety and security requirements when on the Customer Premises and the Customer agrees to do the same for BLUE and any Third Party Service Provider; and

#### **4.10.9 Timing and Arrangement of Access**

BLUE will normally only require access during Working Hours but may, on reasonable notice, require access at other times. If the Customer requests access or work to be carried out outside Working Hours, then BLUE may make an additional Charge.

#### **4.11 Customer Equipment**

All Customer Equipment must comply with all relevant laws, standards and approvals, be technically compatible with the Services, not harm the Service Equipment, or any Line, network or third party equipment, and be connected and used in line with any relevant instructions, standards or laws. If the Customer wishes to connect Customer Equipment to any Service Equipment other than by using a main telephone socket, the Customer must get BLUE's permission.

#### **4.12 Telephone Number in Phone Box**

The Customer accepts that nobody must advertise any telephone number provided or used as part of or in respect of the Services in or on a BT phone box without BT's consent. If this happens, BLUE may suspend the Services or end this Contract, but BLUE will write to the Customer before taking this action.

#### **4.13 Intellectual Property Rights**

The Customer acknowledges that any and all copyrights, design rights, trade-marks and other intellectual property rights in any software or systems used by BLUE or any Third Party Service Provider in connection with the Services, or in relation to any Service Equipment or other software or system accessed or used by the Customer as part of the Services, are and shall remain the sole property of BLUE and/or the Third Party Service Provider, and the Customer shall not have any right, licence or interest therein except for the purpose of accessing and using the Services under this Contract.

#### **4.14 Software and Manuals**

Where any software, or manuals or other documentation, is provided by BLUE or any Third Party Service Provider as part of the Services, then the Customer shall have a non-exclusive, non-transferable licence to use the software and documentation for the duration of those Services for the purposes of accessing and using the Services. Except as permitted by applicable law, or as expressly permitted under this Contract, the Customer must not, without BLUE's prior written consent, copy, de-compile or modify the software, nor copy any documentation, nor knowingly allow or permit anyone else to do so.

#### **4.15 Logos**

Except as stated in Clause 4.14, the Customer shall not and shall not permit anyone else to use any name, logo or trade mark or any intellectual property rights of BLUE, BT or any Third Party Service Provider, without the prior written consent of BLUE, BT or that Third Party Service Provider.

**4.16 Claims against BLUE caused by Customer**

If as a direct or indirect result of any breach of this Contract by the Customer or the Service being used by the Customer or any other person in contravention of Clause 4.5, BLUE suffers or incurs any liability or obligation, including any liability or obligation to pay any sum to any person, and including any legal or contractual liability or obligation which BLUE may have to any Third Party Service Provider to indemnify it or pay any sum to it, then the Customer shall indemnify BLUE on demand from and against any such liability or obligation, and against all reasonable and proper costs and expenses incurred by BLUE in managing, defending and settling any claims or legal proceedings in respect of or alleging any such liability or obligation, and any amounts reasonably and properly payable by BLUE under and costs incurred in complying with any settlements, court orders, judgements or awards made in respect of any such claim or legal proceedings.

**5. CHARGES****5.1 Obligation to Pay**

The Customer shall pay to BLUE the Charges provided under this Contract for all Services and Goods provided under this Contract and each Order under this Contract, in accordance with the payment terms set out in these Conditions and any other part of this Contract.

**5.2 Periodic Charges**

In respect of Periodic Charges:-

**5.2.1 Default Period**

The Period which BLUE applies to all Periodic Charges is a calendar month.

**5.2.2 Starting/Finishing part way through a Period**

Where any Service commences later than the 1<sup>st</sup> day of a Period or terminates sooner than the last day of a Period, then the charge for that Period will be a percentage of the full Periodic charge equal to the percentage which number of days during the Period on which the Service was provided (including commencement and termination days) is of the total number of days in the Period. This shall be subject to any obligation or liability of the Customer to pay any Periodic Charges for or to purchase any Services for any Minimum Period.

**5.2.3 Changes to a periodic charge**

Where any change to a Periodic Charge takes place with effect from any date, including due to any change to the Services or any variation to the Charges, then for the Period in which the change takes effect, the Periodic Charge will be made up of a percentage of the old Periodic Charge, for the days up to (but not including) the change date, and a percentage of the new Periodic Charge for the days from and including the change date.

**5.3 Third Party Service Provider Charges**

BLUE shall be entitled to recharge to the Customer any and all Third Party Charges which BLUE becomes liable to pay for or in connection with any Third Party Services comprised in the Services, including the following:-

**5.3.1 Ancillary Services**

any charges for any Ancillary Services or changes to any Services;

**5.3.2 Abortive and Cancelled Visits**

any abortive and cancelled visit charges, where an appointment is agreed for work at any Customer Premises and the Third Party Service Provider is unable to carry out or complete the work at, or gain access to, the Customer Premises, or the appointment is broken or the Third Party Service Provider cancels any work at any Customer Premises, unless in each case due to BLUE's or the Third Party Service Provider's error;

**5.3.3 Additional/Excess Work**

any charges for any additional work or services provided at the request of the Customer, or for any work required to set up any Services, Line or Service Equipment at any Customer Premises in excess of that which is agreed with the Customer or which is covered by any standard charges and procedures of any Third Party Service Provider;

**5.3.4 Inaccuracies**

any charges resulting from any information provided by the Customer being illegible, inaccurate or incomplete;

**5.3.5 Special Fault Handling**

charges for requested working on faults outside agreed Working Hours and Days, charges where a visit is made to any Customer Premises to investigate a reported fault and either no fault is found or the fault is not due to BLUE or the Third Party Service Provider, or for investigating and correcting any fault caused by the Customer.

**5.4 Price List and Default Rate**

BLUE may at any time and from time to time at its sole discretion issue a price list to the Customer to specify and/or confirm the Charges currently applicable to this Contract and all Orders, Goods and Services, or any of them. If BLUE has not otherwise agreed in writing the Charges for any Services or Goods, all Charges shall be in accordance with any standard published retail or end-user Charges of BLUE, or if there is no such published Charge, the Charge shall be at the same rate as the published retail rate of BT in its price list for the Services (if BLUE is reselling BT services) or the published retail rate of any other Third Party Service Provider whose services BLUE is reselling. In particular, if BLUE is entitled to recharge any Third Party Charge to the Customer, BLUE may recharge at the published retail rate which BT or any other Third Party Service Provider would have charged and not any wholesale rate charged to BLUE.

**5.5 Reference Data**

All Charges shall be calculated by reference to data recorded or logged by BLUE and any Third Party Service Provider, and not by reference to any data recorded or logged by the Customer, or by reference to any information provided by BLUE to the Customer for information purposes only.

**5.6 Units and Rounding**

All Charges shall be calculated using the minimum units and rounding rules applied by BLUE and/or any Third Party Service Provider from time to time. Currently, for Calls, these are charged at a rate per minute or part thereof and are billed in one second units. The individual calls are billed to the nearest £0.0001 and total Call Charges rounded to the nearest £0.01.

**5.7 VAT**

All Charges and other amounts payable hereunder are exclusive of value added tax and any other applicable sales tax or duty, which may be charged in addition at the rate applicable from time to time.

**6. PAYMENT TERMS**

The following payment terms shall apply to the payment of all Charges:-

**6.1 Invoicing****6.1.1 Initial Charges**

In respect of any Initial Charges for any Services and Charges for any Goods, BLUE may invoice these in advance or on Order.

**6.1.2 Periodic Charges**

In respect of any Periodic Charges, the first Periodic Charge shall be due with Order, and BLUE

may invoice any subsequent Periodic Charges in advance at the start of the Period to which such Periodic Charges relate. BLUE's default Period is a calendar month.

### **6.1.3 Call Charges**

In respect of any Call Charges, BLUE may invoice for these at any time after the relevant Call has been made or received or such Call Charge has otherwise been incurred or the Services to which the Call Charge relates have been provided. BLUE may at its discretion invoice these in arrears at the end of a Period and/or with the next Periodic Charge for any Services .

### **6.1.4 Usage Charges**

In respect of any Usage Charges, BLUE may invoice for these at any time after such Usage Charge has been incurred or the Services or Goods to which the Usage Charge relates have been provided. BLUE may at its discretion invoice these in arrears at the end of a Period and/or with the next Periodic Charge for any Services

### **6.1.5 Other Charges**

BLUE may invoice any other Charges on or at any time after such Charge has been incurred or the Goods or Services which such Charge relates have been provided. BLUE reserves the right to invoice in advance or on Order for any such Charges.

### **6.1.6 Adjustments**

Where there is any adjustment to a Periodic Charge or other Charge, then this adjustment will normally be invoiced by BLUE, as a debit or credit as the case may be, with the next Periodic Charge.

## **6.2 Invoice Address**

BLUE will send invoices to the address requested by the Customer, or if no address is supplied, to any place of business of the Customer. The Customer may also view its invoices on line using any online billing tool provided by BLUE through the BLUE Website.

## **6.3 Payment of Invoices**

All invoices for the Charges shall be paid by the Customer within 7 days of the date of invoice. BLUE retains title to all Goods supplied under an Order until payment in full is received in cash or cleared funds for such Goods.

## **6.4 Disputes**

If the Customer disputes any Charge on an invoice the Customer will within 14 days of the date of the invoice notify BLUE with all relevant information supporting the Customer's claim. Invoices shall be deemed to have been accepted by the Customer, and BLUE shall be entitled to enforce payment of such invoices as an action for the price, if the Customer does not present a written objection within that time period. This will be without prejudice to the Customer's right to subsequently claim a repayment of any Charges it is found not ultimately to be liable to pay.

## **6.5 Payment Method**

Payment of any Charges shall be made in Pounds Sterling by such method as determined by BLUE (which may include payment by BACS, direct debit, credit or debit card). Where a direct debit has been set up, or any credit or debit card has been provided, then BLUE may collect payment of Charges by direct debt or from such card when they fall due. BLUE may in its discretion accept payment by cheque on a case by case basis.

## **6.6 Interest**

If any Charges become overdue, then the Customer shall pay on demand interest on such overdue Charges running from and including the date they were due, to but excluding the date they are paid, whether before or after judgement. Such interest will be calculated and will accrue on a daily basis at the rate of 8% per annum

above the Bank of England Base Rate (being the official dealing rate, otherwise known as the "repo rate", as set by the Monetary Policy Committee) applicable on each such day.

**6.7 Recovery Costs**

The Customer shall pay any reasonable and proper costs and expenses incurred by BLUE in enforcing payment of any overdue Charges under this Contract.

**6.8 No Set-Off**

All Charges shall be paid in full without set-off, deduction or withholding.

**7. AUTHORISED REPRESENTATIVE**

Each party shall nominate an individual Authorised Representative for the purposes of this Contract, who shall be that Party's contact for the purposes of this Contract, shall have authority to receive notices and other communications in connection with this Contract. A party may replace or nominate a temporary stand-in for its representative from time to time. Each party shall ensure that the other has up-to-date contact details for its Authorised Representative, and shall provide these on request.

**8. CONFIDENTIALITY**

The parties shall keep in confidence any information (whether written or oral) of a confidential nature obtained from the other in connection with this Contract, including information concerning its software, systems and prices, and information of any third party (including any Third Party Service Provider), and will not without the written consent of the other party disclose that information to any person, other than on a confidential basis to their employees or professional advisers, or to any Affiliate who needs to know the information, or where required to do so under any statutory or regulatory obligation, or where permitted to do so under this Contract, or required in order to perform this Contract, or where reasonably required in connection with any permitted assignment of this Contract or any change in ownership of a party. This Clause shall not apply to any information in the public domain, unless through breach of this Contract. The Customer agrees that BLUE shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and give access to any communications made and materials, data or information hosted or processed using the Services, without notice to the Customer.

**9. SUSPENSION****9.1 Grounds**

BLUE may temporarily suspend the Services or any part of them, or any Order or Orders, and/or may suspend acceptance of further Orders from the Customer, without liability to the Customer, if (1) the Customer fails to pay any Charges by the due date, or (2) is in breach of this Contract, or (3) BLUE has any right to terminate this Contract under Clauses 10 or 13, or (4) BLUE has grounds to believe that the Customer may fail to pay any Charges or breach this Contract, or (5) BLUE considers in its sole discretion that any use is being made of the Services (whether with or without the knowledge of the Customer) which is or may be in breach of Clause 4.5 or any other term of this Contract, or (6) BLUE needs or is obliged to do so to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative authority, including Ofcom, or (7) any Third Party Service which BLUE is reselling or on which the Services depend is suspended for any reason.

**9.2 Notice of suspension**

If BLUE intends to exercise this right of suspension, it will give notice to the Customer stating the reasons, the applicable Services, when the suspension will commence (which will normally be at least 7 days after service of the notice, unless shorter notice is reasonably justified or is imposed on BLUE by any Third Party Service Provider, law or regulatory requirement), and the action BLUE reasonably requires the Customer to take (if applicable) to lift the suspension, or the expected duration of the suspension (if known).

**9.3 Reinstatement**

BLUE will only be obliged to re-instate the services if BLUE is reasonably satisfied that any reasons for the suspension no longer apply and the customer has taken any action reasonably requested by BLUE.

#### 9.4 Costs

The Customer will meet any reasonable and proper costs and expenses suffered or incurred by BLUE in connection with such suspension or any reinstatement which is due to any act or omission or anticipated act or omission of the Customer.

#### 9.5 Termination Rights

Any suspension shall be without prejudice to any rights of BLUE to terminate this Contract under Clause 10, which BLUE may proceed to exercise at any time, whether before, during or after any period of suspension.

### 10. TERMINATION

#### 10.1 Breach and Insolvency

A party may terminate this Contract immediately on notice to the other, if (1) the other commits a breach of this Contract, which is capable of remedy, and fails to remedy the breach within 30 days of a written notice to do so, or (2) commits a repudiatory breach of this Contract, or (3) becomes bankrupt, or has a receiver, administrative receiver or administrator appointed in respect of the whole or any part of its undertaking or assets, or (4) has any order given or resolution passed for its winding up or liquidation, or (5) enters into a composition or arrangement with its creditors.

#### 10.2 Non-Payment

BLUE may terminate this Contract immediately on notice to the Customer if any amount payable by the Customer to BLUE under this Contract shall become overdue and shall not have been paid by the Customer within 14 days after notice from BLUE that such amount is overdue.

#### 10.3 Non-Use Termination

Either party may terminate this Contract immediately by notice to the other at any time if at that time BLUE is not contracted to provide and the Customer is not contracted to purchase any services or goods under this Contract or any Order under this Contract.

#### 10.4 Scope and Timing of Termination

Any termination under Clauses 10.1, 10.2 or 10.3 may be with respect to some or all of the Orders under this Contract, and/or any obligation to accept any future Orders under this Contract. If the terminating party does not specify this in its notice, then termination will be with respect to this Contract as a whole and all Orders in force under it. Any notice of termination shall have effect on such date as the party giving such notice may specify in its notice, or if no date is specified, shall have immediate effect.

#### 10.5 Consequences of Termination

On cancellation, expiry or termination of this Contract or any particular Services or Order under this Contract, the following provisions will apply to the extent of such cancellation, expiry or termination:-

##### 10.5.1 Cessation of Services

The Services affected by such cancellation, expiry or termination will cease on the date of such cancellation, expiry or termination, or such later time that BLUE is able to practically bring such Services to an end. In the case of any Services which comprise a Third Party Service, the Services will terminate at the time that BLUE is able to bring to an end such Third Party Service. BLUE will exercise any termination, cancellation or cession rights in relation to any Third Party Service with a view to effecting termination by the date of cancellation, expiry or termination of this Contract, or any Services or Order as the case may be, or as soon as reasonably practicable thereafter. Until that time, the Customer will continue to pay all Charges for the Services.

##### 10.5.2 Settlement of Charges

All Charges shall become due and payable, and the Customer shall be liable to settle forthwith all outstanding Charges in respect of all periods up to and including the date of termination.

#### **10.5.3 Refunds**

BLUE will refund any money owed to the Customer in respect of any Services terminated, after first deducting any money the Customer owes to BLUE under this Contract or any other agreement BLUE has with the Customer.

#### **10.5.4 Data**

The Customer will be given a reasonable period to retrieve any data from any System relating to the Services, otherwise such data may be deleted by BLUE.

#### **10.5.5 Removal of Equipment**

BLUE and any Third Party Service Provider will be entitled to enter any Customer Premises unobstructed, to disable any Line and remove any Service Equipment, where applicable, unless the Line or Service Equipment belongs to a Third Party Service Provider and the Customer is purchasing any continued services using that Line or Service Equipment from any third party with the permission of that Third Party Service Provider.

#### **10.5.6 No Waiver of Breaches**

Cancellation, termination or expiry of this Contract or any Service shall not be deemed a waiver of a breach of any term or condition of this Contract or any Services, and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry or in relation to any breaches of this Contract.

#### **10.5.7 Regulatory Obligations**

Termination or expiry of this Contract or any Services shall not affect any regulatory obligation upon the parties to negotiate in good faith any subsequent contract relating to the subject matter of this Contract or Services.

#### **10.5.8 Continuation of terms**

Termination of this Contract shall not affect the terms of Clauses 5, 6, 8, 10, 11, 12, 13, and 16, which shall continue in full force and effect without limit of time.

### **11. LIABILITY**

#### **11.1 Liability not excluded or limited**

Nothing in this Contract shall exclude or limit any liability (1) for death or personal injury resulting from its negligence, (2) for fraud or fraudulent misrepresentation, (3) for loss or damage caused directly by breach of any obligations in relation to confidentiality or data protection, (4) under any indemnity given in this Contract, (5) of BLUE to refund any Charges, (6) of the Customer to pay any Charges or to purchase any Services for any given period of time or Minimum Period. Nothing in this Clause 11 shall exclude or limit any rights to terminate this Contract or any Order, or seek any injunction or order for specific performance.

#### **11.2 Liability Excluded and/or Limited**

Subject to Clause 11.1, this Clause 11 sets out the sole and exclusive liability of each party to the other whatsoever under or in connection with this Contract and the Goods and Services, including (without limitation) (1) for any breach of this Contract, (2) under any term, warranty or condition of this Contract, (3) for any negligence or breach of statutory duty under or in the course of performing this Contract, or (4) for any act or omission of any officer, employee or sub-contractor, (5) and for any negligent or accidental misrepresentation in connection with this Contract, in all cases whether such liability arises in contract, tort, negligence, statute or otherwise howsoever (referred to as "Contract Liability").

#### **11.3 Excluded Loss**

Subject to Clause 11.1, neither party shall have any Contract Liability to the other for (1) loss of revenue, bargain, profit, anticipated savings, contract, business, expectation, or goodwill, or (2) for any costs, expenses, liabilities, or commitments suffered or incurred in reliance on this Contract being performed, or (3) any costs of purchasing substitutes or replacements for the Services or Goods elsewhere, (4) for any special, indirect or consequential losses, or (5) for any loss of or corruption to data.

#### **11.4 Property Damage**

Subject to Clause 11.3, this Contract Liability of either party the cost of repairing or replacing, or any diminution in value of, any physical property which is lost or damaged shall be limited to £1,000,000 in aggregate for all incidents of such loss or damage.

#### **11.5 Contract Cap**

Except for any loss or liability covered by Clause 11.1 or Clause 11.4, a party's aggregate Contract Liability to the other for all events giving rise to Contract Liability shall be limited to £60,000.

#### **11.6 Exclusion of Implied Terms**

BLUE excludes all terms, conditions and warranties (other than as to title to any goods) implied by law with respect to all Goods and Services provided under this Contract, to the fullest extent permitted by law.

#### **11.7 Third Party Service Providers**

The Customer agrees that each Third Party Service Provider shall have with respect to the Customer the benefit of the same exclusions and limitations of liability, and indemnifications, as stated in this Clause 11, as if the Third Party Service Provider were named in this Clause 11 instead of BLUE, references to Services were to the Third Party Services provided by that Third Party Service Provider forming part of the Services, and Contract Liability included a reference to any liability whatsoever of a Third Party Service Provider to the Customer arising out of or in connection with any such Third Party Services, or degradation of, failure of or interruption to any such Third Party Services, including (without limitation) for breach of a duty of care in tort held to be owed by that Third Party Service Provider to the Customer in connection with or as a direct or indirect result of the provision of such Third Party Services.

#### **11.8 Consumers**

The provisions of this Clause 11 shall not apply to any Customer who is contracting as a Consumer under this Contract.

### **12. DATA PROTECTION**

The parties each agree to comply with their respective obligations under the Data Protection Act 1998 and any other applicable data protection legislation in connection with any data processed as part of or using the Services, and to do nothing which would or may put the other party in breach of that act. In particular, each party agrees to obtain the consent of any individuals whose data is to be processed on that party's behalf by the other party under this Contract. The parties may put any contact details of individuals connected with the other party (including officers, employees, partners and owners) into a computerised database for use in connection with the administration of this Contract, and in addition the Customer agrees that BLUE may use this information to send to the Customer from time to time marketing and other information related to this Contract and BLUE's products and services.

### **13. FORCE MAJEURE**

#### **13.1 No Liability**

If BLUE fails to provide the Services or any Services are interrupted or adversely affected by, or If either party fails to perform any obligation (other than a payment obligation) under this Contract (including in whole, in part or in the manner required by this Contract) because of, a matter beyond that party's reasonable control, then that party shall not be considered to be in breach of this Contract and shall have no liability to the other for any loss, damage or liability caused thereby.

**13.2 Examples of Force Majeure**

The following matters shall be deemed to be beyond a party's reasonable control for the purposes of Clause 13.1 : (1) acts of God, (2) war, threat of war, terrorism, riot, civil commotion, or act of the public enemy, public demonstration, blockade, sabotage, (3) the act of any government agency or authority, governmental restraint, act of legislature, or any directive or requirement of a competent authority governing either party, (4) strikes, lock-outs or other industrial action or trade disputes of whatever nature (including the employees of either party or their sub-contractors), (5) lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, (6) shortage of or prevention from or hindrance in obtaining in any way labour, parts, materials, fuel, energy or other supplies, either at all or at an economic cost, (7) failure of power supply, explosion, fault or failure of plant or machinery, (8) any delay or failure by any sub-contractors to perform their obligations (other than breach of contract by sub-contractors), or any (9) interruption, termination or failure of any System or Third Party Service.

**13.3 Termination**

If any event referred to in Clauses 13.1 and 13.2 shall continue to substantially interrupt or disrupt any Services for more than 30 days, either party may terminate those Services immediately by notice to the other.

**14. VARIATION TO THE CONTRACT****14.1 Charges**

BLUE shall be entitled to unilaterally vary the Charges and the terms of payment of the Charges at any time on notice to the Customer. Any such variation will be effective from the date specified in the notice to the Customer, and BLUE shall be entitled to make any necessary adjustments in and to its invoices to account for any changes. BLUE will normally give 30 days notice of any variation, but may give a shorter period of notice where the variation is as a consequence of any variation made by a Third Party Service Provider to the charges payable by BLUE in respect of any Third Party Service or the terms of payment for such charges, to coincide with such change.

**14.2 General Variations**

BLUE shall be entitled to unilaterally vary the terms of this Contract and the specification of the Services from time to time, if (1) BLUE is making such changes generally in relation to all of its Customers for services or goods of the type being supplied to the Customer under this Contract, or (2) any Third Party Service Provider varies the terms or specification for any Third Party Service or changes any aspect of any System, or (3) such change is necessary to comply with any legal or regulatory obligation, or (4) BLUE or any Third Party Service Provider is introducing or withdrawing any service features or changes to any service levels, or making any changes to the technical specification of the Services or System, or (5) necessary to maintain the integrity or security of the Services or any telecommunications network, or (6) these are process changes to improve the quality of the Service, (7) to improve clarity, or make corrections to typographical errors. BLUE will normally give 30 days notice of any such variation, but may give a shorter period of notice where the variation is as a consequence of any change in the law, a regulatory requirement, any variation made by a Third Party Service Provider in respect of its Third Party Service.

**15. NOTICES**

Notices given under this Contract must be in writing, and shall be sent by hand, pre-paid first class post, pre-paid recorded delivery post, fax or e-mail. Notices shall be sent to any Authorised Representative of a party, or to postal or e-mail address or fax number of a party set out in any document forming part of this Contract; or to any postal or e-mail address or fax number of a party which that party notifies the other as an address or fax number for notices in accordance with this Clause; or in any event, if the recipient is a company, by post addressed to the company secretary or managing director at the registered office of the recipient, or if a partnership (including an LLP) or sole trader, by post addressed to the managing partner or owner at any place of business or registered office of the recipient. A notice shall be duly served: if delivered by hand, at the time of delivery; if sent by first class post, on the third Working Day from (but not including) the date of posting; if sent by fax, at the time of transmission; and if sent by email, at the time of transmission.

**16. GENERAL****16.1 Entire Agreement**

This Contract and any written document expressly incorporated in writing into this Contract represents the entire agreement between the parties relating to its subject matter. The parties acknowledge that neither of them has been induced to enter into this Contract by, or has relied on, any statement, representation, or promise not expressly recorded in a written document forming part of this Contract. This Contract replaces any and all previous agreements, understandings, and offers relating to the subject matter of this Contract.

**16.2 Warranty of Authority**

Each party warrants to the other party that (1) it has the unimpaired right and authority to enter into and perform this Contract which shall constitute a binding obligation on it, (2) it has all such licences, approvals and consents as are necessary to enable BLUE and the Customer to legally provide or receive the Services as envisaged by this Contract, and (3) it is party to this Contract as principal and not as agent or trustee for any third party.

**16.3 Sub-contracting**

BLUE may sub-contract, delegate or appoint an agent for the performance or exercise of any or all of its rights and obligations under this Contract without notice to the Customer.

**16.4 Assignment**

BLUE may assign, charge, novate, declare a trust over or otherwise transfer this Contract or any debts due under it without the prior consent of the Customer. The Customer may not assign, transfer, charge, declare a trust over, or otherwise deal in this Contract or any part of it without the prior written consent of BLUE.

**16.5 No Partnership**

Nothing in this Contract shall create a partnership or joint venture between the parties.

**16.6 Waivers**

Failure by either party to exercise or enforce any right conferred by this Contract shall not be deemed to be a waiver of any such right nor operate so as to prevent the exercise or enforcement of that right or of any other right on any later occasion. If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract that waiver is limited to that particular breach.

**16.7 Invalidity and Severability**

If any court of competent jurisdiction or government authority determines that any provision of this Contract is invalid, illegal, unfair or unenforceable for any reason, or should otherwise be removed, then such provision shall be severed and the remainder of its provisions will continue in full force.

**16.8 Third Party Rights**

The terms of this Contract shall not be enforceable by a third party under this Contracts (Rights of Third Parties) Act 1999, except as provided in Clause 11.7. Where any third party can enforce any term of this Contract then this may be varied by agreement between the parties or under any unilateral right of variation stated in this Contract.

**16.9 Law and Jurisdiction**

This Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.