

XTEL (UK) LIMITED

TRADING TERMS AND CONDITIONS

The Customer's attention is in particular drawn to the provisions of condition 31

1. INTERPRETATION

1.1 The following definitions and rules of interpretation shall apply to these conditions.

‘the Customer’	means the person, firm or company who purchases the Equipment and/or Services from the Company;
‘Business Day’	means any day on which the clearing banks in the City of London are open for business;
‘the Carrier’	means the relevant third party public telecommunications operator or third party network service provider;
‘the Company’	means Xtel (UK) Limited (crn 520278) of Headway Business Centre, Knowles Lane, Dudley Hill, Bradford BD4 9SW;
‘the Contract’	means any contract between the Company and the Customer for the sale and purchase of the Equipment and/or Services, incorporating these conditions and a Customer Order Form;
‘the Connection Date’	has the meaning set out in condition 12;
‘the Commencement Date’	in relation to the Installation, has the meaning set out in condition 5.2, and in relation to the Maintenance Services, has the meaning set out in condition 20.1.1;
‘Customer Order Form’	means each of the Telephone Service Order Form, the Network Service Order Form and the Maintenance Service Order Form, and a reference to ‘Customer Order Forms’ shall be construed accordingly;
‘the Contract Price’	means the price payable by the Customer to the Company under the Contract in respect of the Equipment and/or the Installation Charges, as set out in the relevant Customer Order Forms, subject to any adjustment provided for under these conditions;
‘Delivery’	has the meaning set out in condition 4.1, and a reference to ‘Delivered’ or ‘Deliveries’ shall be construed accordingly;
‘Deemed Delivery Date’	has the meaning set out in condition 4.5.1;
‘Deposit’	has the meaning set out in condition 8.1;
‘the Equipment’	means any equipment agreed in the Contract to be supplied to the Customer by the Company, and a reference to ‘Equipment’ may (as the context so requires) be construed as meaning any constituent part comprised in the whole of the Equipment supplied;
‘Engineer’	means an engineer employed, engaged or contracted by the Company to carry out the Maintenance Services;
‘Existing Network Provider’	means the Customer’s provider of network services (if any) prior to the date of the Contract;
‘Excepted Services’	has the meaning set out in condition 19.3;
‘Finance Agreement’	means the agreement between the Customer and a Finance Provider, in relation to the price payable for the Equipment and Installation;
‘Finance Provider’	means a party who proposes to, and/or provides, finance to the Customer in relation to the payment of the Contract Price;
‘General Conditions’	means the General Conditions of Entitlement set out in the Schedule to the notification published by the Director General of Communications on 22 July 2003 pursuant to section 48(1) of the Communications Act 2003;
‘Installation’	means the installation of the Equipment by the Company (including its employees, agents and/or contractors) at the Job Site;
‘Installation Charges’	means the price payable by the Customer to the Company for the Installation Services;
‘the Installation Services’	means the installation and commissioning of the Equipment at the Job Site;
‘Job Site’	means the premises at which the Equipment is to be installed and commissioned under the Contract;
‘the Maintenance Charges’	means the charges levied by the Company for the Maintenance Services;
‘the Maintenance Services’	has the meaning set out in condition 19.1;
‘the Maintenance Services Order Form’	means the order form completed by the Customer and the Company, detailing the

‘the Minimum Period’	Customer’s order for Maintenance Services; means, in relation to Network Services and/or the Maintenance Services, the minimum period for the provision by the Company to the Customer of the Network Services or the Maintenance Services (as the context so provides);
‘the Network Services’	means the network services to be provided by the Company to the Customer, described in the Network Services Order Form;
‘the Network Services Order Form’	means order form completed by the Customer and the Company, detailing the Customer’s order for Network Services;
‘the Network and Services Tariff’	means the Company’s tariff of charges, from time to time, for the various services and features offered by the Company, which information shall be available from the Company on request or from the Company’s website;
‘the Network Transfer’	has the meaning set out in condition 11;
‘Normal Working Hours’	means 9am to 5pm on any Business Day;
‘Practical Completion Date’	has the meaning set out at condition 8.2;
‘Qualifying Equipment’	has the meaning set out in condition 19.1.2;
‘Relevant Period’	has the meaning set out in clause 27.3;
‘the Services’	means the Installation Services, the Maintenance Services and the Network Services;
‘the System’	means the telecommunications system comprised of the Equipment Installed under the Contract;
‘the Telephone System Order Form’	means the order form completed by the Customer and the Company, detailing the Customer’s order for Equipment;
‘Trade Marks’	has the meaning set out in condition 30.1.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Equipment or Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Equipment and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Equipment and/or Services subject to these conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until the relevant Customer Order Form has been signed for and on behalf of the Company by an authorised representative of the Company.

2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 5 Business Days only from its date, provided that the Company has not previously withdrawn it.

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- 2.8 An order for Equipment, and an order for each category of Service, shall, when such orders are made together or otherwise, be treated as a separate and distinct Contract.
- 3. DESCRIPTION**
- 3.1 The quantity and description of the Equipment and Services shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- EQUIPMENT AND INSTALLATION**
- The following conditions apply where the Customer and Company have duly completed an order for Equipment and/or Installation Services.
- 4. DELIVERY**
- 4.1 Unless otherwise agreed in writing by the Company, delivery ("Delivery") of the Equipment shall take place when the Equipment is Delivered to the Customer's place of business.
- 4.2 The Customer shall take Delivery of the Equipment within 2 Business Days of the Company giving it notice that the Equipment is ready for Delivery and Installation.
- 4.3 Any dates specified by the Company for Delivery of the Equipment are intended to be an estimate and time for Delivery shall not be made of the essence by notice. If no dates are so specified, Delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the Delivery of the Equipment (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 30 Business Days.
- 4.5 If for any reason the Customer fails to accept Delivery of any of the Equipment and/or fails to facilitate access to the Job Site for the purpose of Installation, when they are ready for Delivery and/or Installation:
- 4.5.1 the Equipment shall be deemed to have been Delivered on the date that they were ready for Delivery ("the Deemed Delivery Date"); and
- 4.5.2 risk in the Equipment shall pass to the Customer (including for loss or damage caused by the Company's negligence) from the Deemed Delivery Date;
- 4.5.3 the Company may store the Equipment until Delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5.4 without prejudice to any other rights under the Contract, the Company may after 20 Business Days dispose of the Equipment on such terms and in such manner as it may see fit and without any further liability to the Customer under the Contract.
- 5. INSTALLATION**
- 5.1 Where the Customer contracts with the Company for the Company to provide the Installation Services, the Company will, in consideration of the payment by the Customer to the Company of the Installation Charges, Install the Equipment at the Job Site.
- 5.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Customer Order Form ("the Commencement Date"), but any such dates shall be estimates only and time for providing the Services shall not be made of the essence by notice.
- 6. RISK/TITLE**
- 6.1 The Equipment is at the risk of the Customer from the time of Delivery.
- 6.2 Ownership of the Equipment shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Equipment; and
- 6.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Equipment has passed to the Customer, the Customer shall:
- 6.3.1 hold the Equipment on a fiduciary basis as the Company's bailee;
- 6.3.2 ensure that the Equipment remains readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- 6.3.4 maintain the Equipment in satisfactory condition and keep it insured on the Company's behalf for its full price against all risks and to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 6.4 The Customer's right to possession of the Equipment shall terminate immediately if:
- 6.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 6.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 6.4.3 the Customer encumbers or in any way charges any of the Equipment.
- 6.5 The Company shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from the Company.
- 6.6 The Customer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is located in order to inspect it, or, where the Customer's right to possession has terminated, to recover it.
- 6.7 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.
- 7. PRICE - EQUIPMENT AND INSTALLATION**
- 7.1 Unless otherwise agreed by the Company in writing, the price for the Equipment and the Installation Services shall be the Contract Price.
- 7.2 The price for the Equipment shall be exclusive of any value added tax which the Customer will pay in addition when it is due to pay for the Equipment and/or Installation Services.
- 8. DEPOSITS AND PAYMENT**
- 8.1 The Company may require the Customer to pay a deposit at the time of entering into the Contract ("the Deposit"). The deposit shall be non-refundable save where the Contract is terminated in circumstances where the Company is in breach of its obligations under the Contract or pursuant to condition 34.
- 8.2 Payment of the Contract Price (plus VAT) (less any Deposit) is due in pounds sterling within 10 Business Days of the date of Delivery (where Equipment is to be supplied but not Installed) or (where the Company is contracted to Install the Equipment) within 3 Business Days of the Company notifying

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- the Customer that the Installation has been completed in all material respects (**'Practical Completion Date'**).
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.7 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.
9. **QUALITY**
- 9.1 Where the Company is not the manufacturer of the Equipment, the Company shall (at the Customer's request) endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants (subject to the other provisions of these conditions) that on Delivery, and for a period of 12 months from the date of Delivery, the Equipment shall:
- 9.2.1 be of satisfactory quality within the meaning of the Sale of Equipment Act 1979;
- 9.2.2 be reasonably fit for any particular purpose for which the Equipment is being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 9.3 The Company shall not be liable for a breach of the warranty in condition 9.2 unless:
- 9.3.1 the Customer gives written notice of the defect to the Company within 3 Business Days of the time when the Customer discovers or ought to have discovered the defect; and
- 9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Equipment in situ and the Customer (if asked to do so by the Company) returns such Equipment to the Company's place of business (initially at the Company's cost) for the examination to take place there.
- 9.4 The Company shall not be liable to replace or repair defective Equipment under condition 9.2 or otherwise if:
- 9.4.1 the Customer makes any further use of such Equipment after giving notice under 9.3; or
- 9.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
- 9.4.3 the Customer's misuse or neglect;
- 9.4.4 the Customer (or any employee, agent or contractor of the Customer) alters or repairs such Equipment without the written consent of the Company.
- 9.5 Subject to condition 9.3 and condition 9.4, if any part of the Equipment does not conform with the warranties in condition 9.2 the Company shall at its option repair or replace such Equipment (or the defective part) or refund the price of such Equipment at the relevant unit price of such Equipment. Any replacement may be with identical Equipment (or parts) or with Equipment (or parts) which are compatible with the System and which substantially performs in like manner to the defective Equipment.
- 9.6 If the Company complies with condition 9.5, it shall have no further liability for a breach of the warranties in condition 9.2 in respect of such Equipment.
- 9.7 Any Equipment replaced or repaired shall be guaranteed on these terms for the unexpired portion of the 12 month period (referred to in condition 9.2).
- 9.8 If the Equipment, in the reasonable opinion of the Company, has been damaged through the neglect or misuse of the Equipment by the Customer, or where the defective Equipment has been tampered with by the Customer (its employees, agents and contractors) in breach of condition 9.4.4, the cost of any repairs carried out by the Company, the cost of postage and packaging of the defective and replacement Equipment (where applicable) and/or the cost of replaced Equipment, shall be charged to the Customer in accordance with the Company's then current scale of charges (including, without limitation, the costs of call-out charges, labour charges, and the retail cost of replacement parts and materials).
- NETWORK CONNECTION AND SERVICES**
- The following conditions apply where the Customer and Company have duly completed an order for Network Services.
10. **NETWORK CONNECTION**
- 10.1 The Company, subject to these conditions, shall procure the connection of the System to the public telephone system, and/or the provision of additional lines to the public telephone system.
- 10.2 The Customer shall ensure that a suitable earthed mains electricity supply of 240 volts (complying with all applicable regulations) is at the date of Delivery available to within 2 metres of the intended position of the System's central processing unit.
- 10.3 The Company gives no guarantee or warranty that the System will be capable of connection to the public telephone system.
11. **TRANSFER BETWEEN NETWORKS**
- 11.1 The Company shall use all reasonable efforts to transfer the provision of the Network Services from the Customer's Existing Provider to the Company (**'the Network Transfer'**). The Customer acknowledges that the Network Transfer can take a number of weeks to complete.
12. **DURATION**
- 12.1 The Network Services shall commence on the first date on which the Network Transfer is completed (**'the Connection Date'**), and subject to these conditions, continue for the Minimum Period.
- 12.2 Subject to 12.1, the Company shall continue to provide the Network Services until either party provides to the other not less than 6 month's written notice to terminate the Contract.
13. **SUPPLY OF TELEPHONE NUMBERS**
- 13.1 The Customer hereby acknowledges and accepts that under the General Conditions the Director General has the power to withdraw an allocation of telephone numbers and therefore the available and allocation of new telephone numbers to the Customer under the Contract cannot be guaranteed until actual connection of the line by the Carrier. Accordingly the Company shall not be liable to the Customer for any costs incurred by the Customer in the use of such telephone numbers (including, without limitation, the cost of advertising of such telephone numbers).
14. **THE NETWORK SERVICES**
- 14.1 The Company may carry out a "survey" to determine the extent and nature of the Customer's existing network services provided by its Existing Network Provider. Where the Customer, on the Network Services Order Form, had stated that they require their new Network Services to incorporate the same features as their existing network services, the Company will charge the Customer for any such features in accordance to its Services Tariff.
- 14.2 Whilst the Company shall use all reasonable efforts to provide the Network Services without interruption, the Company gives no warranty or guarantee that this level of service will be achieved.
- 14.3 Unless otherwise specifically stated in the Customer Order Form, the Customer (and not the Company) will be responsible for any costs and charges that may be levied by the Customer's Existing Provider in connection with the Network Transfer or otherwise.
- 14.4 The Customer shall be responsible for the safe custody and safe use of the Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:
- 14.4.1 to use the Network Services in accordance with such conditions as may be notified to it in writing by the Company from time to time;
- 14.4.2 to use the Network Services in accordance with all applicable laws and regulations, including (without limitation) to refrain from attaching to the System any apparatus if it does not so conform with legal requirements, or if in the reasonable opinion of the Company it is liable to cause death, personal injury, or damage or impair the quality of the Network Service;
- 14.4.3 not to contravene the General Conditions;
- 14.4.4 not to use the Network Service as a means of communication for a purpose other than that

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- for which the Network Service is provided or for such other purpose as may be detailed in any relevant literature supplied by the Company to the Customer from time to time;
- 14.4.5 not to use the Network Service in a manner which constitutes a violation or infringement of the rights of any other party;
- 14.4.6 to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with all applicable regulatory standards from time to time;
- 14.4.7 to implement and maintain adequate control and security over the Customer's use of the Network Services.
- 14.5 Any equipment installed and provided by or on behalf of the Company (other than the Equipment) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. The Customer agrees to indemnify the Company for all losses, costs and expenses incurred by the Company for the recovery and/or replacement of such equipment.
- 15. PRICE – NETWORK SERVICES**
- 15.1 Unless otherwise agreed by the Company in writing, the price for the Network Services shall be the price set out in the Network Tariff from time to time. Upon any amendment to the Network Tariff, the Company will notify the Customer within 20 Business Days of such changes being made.
- 15.2 The charges for line rental shall be invoiced monthly in advance. The charges for call charges shall be invoiced monthly in arrears.
- 15.3 The price for the Network Services shall be exclusive of any value added tax which the Customer will pay in addition when it is due to pay for the Network Services.
- 16. PAYMENT**
- 16.1 Payment of all invoices is due in pounds sterling within 14 days of its date of issue.
- 16.2 Time for payment shall be of the essence.
- 16.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 16.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 16.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 16.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.
- 17. SUSPENSION AND/OR TERMINATION OF THE NETWORK SERVICES**
- 17.1 Without prejudice to any other right of the Company to suspend or terminate the Network Services, the Company may at its sole discretion suspend forthwith the provision of the Network Services until further notice and without liability to the Customer, having given the Customer reasonable notice either orally and/or in writing, in the event that:
- 17.1.1 the Customer is in material breach of the Contract for Network Services, including (but not limited to) any failure to pay an amount which is due under the Contract;
- 17.1.2 the Customer is in material breach of any other Contract between the Company and the Customer;
- 17.1.3 the Company is obliged to comply with an order, instruction or request of the Government, an emergency service organisation or other competent administrative authority, by virtue of which the Company must suspend or terminate the Network Services;
- 17.1.4 the Company has reasonable grounds to believe that the Network Services are being used fraudulently;
- 17.1.5 any licence under which the Customer has the right to run its telecommunications system and connect to the Network Services is revoked, ceases to be valid or is amended (to the Customer's detriment).
- 17.2 The Customer will reimburse to the Company all reasonable costs and expenses incurred by the Company in connection with the suspension and/or termination of the Network Services under condition 17.1.1, 17.1.2, 17.1.3 and 17.1.4, and (if applicable) all reasonable costs and expenses connected with the resumption of the Network Services.
- 17.3 The Company shall have the right to terminate the Contract for Network Services forthwith in the event that the Company's right, or the right of the relevant Carrier, to provide Network Services is withdrawn by the Director General of Telecommunications.
- MAINTENANCE SERVICES**
- The following conditions apply where the Customer and Company have duly completed an order for Maintenance Services.
- 18. MAINTENANCE SERVICES**
- 18.1 Unless otherwise specifically agreed in writing, the Maintenance Services shall be provided in respect of the Equipment only.
- 18.2 The Company will, in relation to the Equipment, provide the Maintenance Service to the Customer free of charge for a period of 12 months beginning on the Practical Completion Date.
- 18.3 Where the Customer has contracted to purchase Maintenance Services from the Company, the Company will provide the Maintenance Services in consideration of the payment by the Customer to the Company of the Maintenance Charges.
- 19. THE SERVICE**
- 19.1 'Maintenance Services' shall include:
- 19.1.1 the attendance of an Engineer at the Customer's premises during Normal Working Hours for the purpose of diagnosing faults with the Equipment;
- 19.1.2 the repair of Equipment which is defective on account of faulty workmanship and/or materials ('Qualifying Equipment'); (where necessary) the replacement of Qualifying Equipment (or components comprised in the Equipment) with equipment which is of the same make and model, or with other brands and model of equipment which will perform substantially in accordance with the Qualifying Equipment;
- 19.1.4 the provision of all necessary spare parts which in the Company's reasonable opinion are required to keep the Equipment in satisfactory operation.
- 19.2 The Company may use new or reconditioned items in its absolute discretion.
- 19.3 The Maintenance Services shall not include ('the Excluded Services'):
- 19.3.1 the replacement or repair of Equipment which in the Engineer's reasonable opinion is defective on account of:
- 19.3.1.1 any failure to operate the Equipment in accordance with the Company's oral or written instructions as to, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
- 19.3.1.2 accidental damage, misuse or neglect of the Equipment;
- 19.3.1.3 the carrying out of any alteration or repair of the Equipment otherwise than by the Company;
- 19.3.2 the repair or replacement of Equipment damaged or lost due to theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, and/or the attachments or other devices;
- 19.3.3 repairs or adjustments arising out of the alteration, modification or other works carried out on the System by any party other than by the Company's Engineer(s);
- 19.3.4 the relocation of Equipment;
- 19.3.5 the maintenance of any extension wiring after the initial 12 month period following the Practical Completion Period;

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- 19.3.6 the repair or replacement of any defective software used in connection with the Equipment;
- 19.3.7 the supply of consumables, including (but not limited to) the supply of replacement cassettes, aerials, aerial systems and batteries;
- 19.3.8 reprogramming of the Equipment to provide improved and/or modified service features;
- 19.3.9 attending to any faults or reprogramming requirements caused by any change to telephone area codes or changes made by Carriers.
- 20. DURATION**
- 20.1 The Maintenance Services shall commence on the Practical Completion Date, and subject to these conditions, continue for the Minimum Period which shall be:
- 20.1.1 3 years commencing on the date of the Contract or (if applicable) the Practical Completion Date ('the Commencement Date'), or
- 20.1.2 (if longer) for such period as the Customer remains indebted to the relevant finance company under the Finance Agreement.
- 20.2 Subject to condition 20.1, the Company shall continue from year to year to provide the Maintenance Services until terminated by either Party providing written notice of such termination to the other. Such notice must be not less 60 Business Days prior to the next anniversary of the Commencement Date.
- 21. SERVICE LEVEL**
- 21.1 Whilst the Company will endeavour to respond to the Customer's request for Maintenance Services as soon as possible, the Company will (unless a different service level is agreed) respond to the Customer's initial request for an Engineer to diagnose and repair the Equipment within 5 Business Days of its receipt.
- 22. EXCEPTED SERVICES**
- 22.1 The Company may provide Excepted Services, at the Customer's request. The charges levied by the Company for providing the Excepted Services shall be calculated in accordance with the Network and Services Tariff.
- 22.2 Where the Company is asked by the Customer to investigate a defect with the Equipment, and the conclusion of the investigation is that the Equipment is not defective or faulty, the Company reserves the right to levy charges against the Customer for the call out and investigation in accordance with the Company's Service Tariff, together with any incidental costs and expenses incurred (including but not limited to the costs of changing equipment in a postal exchange). Such charges shall be invoiced to the Customer and shall be payable within 14 days of the date of invoice.
- 22.3 Where a fault is diagnosed as a fault on the part of the Carrier, the Company will endeavour to provide to the Customer a Carrier fault reference that may be used by the Customer to recharge relevant costs to the Carrier.
- 23. PRICE**
- 23.1 The Maintenance Charges payable by the Customer for the Maintenance Services:
- 23.1.1 for the Minimum Period shall be stated in the Customer Order Form or in default of that in accordance with the Company's then current Services Tariff;
- 23.1.2 for each successive 12 month period shall be the Service Tariff applying on the anniversary of the Commencement Date.
- 23.2 The price for the Maintenance Services shall be exclusive of any value added tax which the Customer will pay in addition when it is due to pay for the Equipment.
- 24. PAYMENT**
- 24.1 The Company shall invoice the Customer for the relevant fee prior to each anniversary of the Commencement Date. The Maintenance Charges shall be payable in advance prior to each anniversary of the Commencement Date.
- 24.2 Time for payment shall be of the essence.
- 24.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 24.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 24.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 25. CUSTOMER UNDERTAKINGS**
- 25.1 For the period of the Maintenance Contract, the Customer shall:
- 25.1.1 carry out such routine day-to-day preventative maintenance measures as may be recommended in the customer operating instructions and the manufacturer's written recommendations supplied with the Equipment;
- 25.1.2 carry out minor adjustments suggested by the Company including minor programming changes with telephone support and replacement of handsets and cords provided by the Company;
- 25.1.3 appoint at least one member of its staff to act as a 'Principal Operator', who will be trained in the use of the Equipment and who will liaise with the Company in relation to Maintenance Services;
- 25.1.4 not undertake or allow or engage any third party to make any alterations to the programming or physical structure or location of the Equipment;
- 25.1.5 ensure that the environmental conditions for the Equipment are maintained in accordance with the relevant user instructions.
- 26. TERMINATION**
- 26.1 The Company shall be entitled to terminate the Contract for Maintenance Services without further liability (save as specifically provided):
- 26.1.1 where some or all of the Equipment becomes unavailable from relevant suppliers;
- 26.1.2 where any necessary licences and/or approvals that are required by the Company to provide the Maintenance Services are refused, withdrawn and/or revoked by any government or other regulatory agency.
- 26.2 The Company shall endeavour to notify the Customer within a reasonable period of time of it becoming aware that the Equipment will become unavailable. Within a reasonable period of time following such notification, the Company shall either terminate the Maintenance Services or agree with the Customer a programme to replace or upgrade the Equipment affected.
- 26.3 Upon a termination of the Maintenance Services under this condition 23, the Company shall refund to the Customer such proportion of the Maintenance Charges (for the then current year) as is equal to the proportion that the unexpired part of current year (before the anniversary of the Commencement Date) bears to a full year assuming 365 days in the year.
- GENERAL**
- 27. FINANCE**
- 27.1 The Company may, at the Customer's request, seek to procure finance for the Customer in relation to the Contract Price, with a view to the Customer entering into a Finance Agreement. In doing so the Company acts as agent for the Customer only.
- 27.2 The Company gives no warranty or guarantee that the Company will be able to secure finance on behalf of the Customer.
- 27.3 In the event that the Customer is unsuccessful in obtaining adequate finance to discharge the Contract Price, the Customer shall either confirm within a reasonable period of time (which period shall be determined by the Company at its absolute discretion and notified to the Customer) ('the Relevant Period') that they wish to proceed with the Contract or otherwise cancel the Contract.
- 27.4 If the Customer confirms that they wish to proceed with the Contract, the Company may require an additional deposit before supplying any Equipment or Services. If the Customer fails to confirm that they wish to proceed with the Contract within the Relevant Period, the Customer shall be deemed to have cancelled the Contract.
- 27.5 If the Customer cancels (including a deemed cancellation) the Contract:
- 27.5.1 the Company shall be discharged from any further obligation under the Contract;
- 27.5.2 the Company shall retain the Deposit paid by the Customer to the Company to cover the Company's costs of administration, sales and other related costs.
- 27.6 The Customer hereby consents to and shall procure that its owners, directors, officers consent to the Company carrying out searches with credit references agencies relating to the credit worthiness of the Customer and/or its owners directors

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- and officers. The Customer undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the relevant person's records details of the searches which will be seen by other organisations that make searches.
- 27.7 The Customer agrees to indemnify and keep the Company indemnified in relation to any cost, claim, loss, liability or other expense it may suffer or incur (including any repayment by the Company to the Finance Provider of any payment made in respect of the Contract Price) in relation to any failure on the part of the Customer to comply with the terms of the Finance Agreement including (without limitation) the Customer's failure to make repayments to the Finance Provider of the sums due under the Finance Agreement.
28. **CUSTOMER'S OBLIGATIONS**
- 28.1 The Customer shall:
- 28.1.1 co-operate with the Company in all matters relating to the provision of the Installation Services and/or the Maintenance Services (as the case may be);
- 28.1.2 provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Job Site, office accommodation, data and other facilities as reasonably required by the Company both during Normal Working Hours and outside Normal Working Hours for the purpose of performing the Contract;
- 28.1.3 provide to the Company, in a timely manner, all information as the Company may reasonably require for providing the relevant Services;
- 28.1.4 ensure that all harmful materials (including, but not limited to Asbestos), which are located at the Job Site are notified to the Company, and where such materials may be encountered as part of the Installation, ensure that they are removed prior to the Commencement Date;
- 28.1.5 ensure that the Job Site is a safe place for the Company's employees agents and contractors to provide the relevant Services and otherwise complies with all applicable health and safety laws and regulations;
- 28.1.6 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply the Job Site for a period which is not less than the unexpired term of the Finance Agreement;
- 28.1.7 keep, maintain and insure the Equipment in good condition and in accordance with the Company's instructions as notified in writing from time to time, and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation.
- 28.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 28.3 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 28.4 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or sub-contractor of the Company in the provision of the Services.
29. **CUSTOMER'S INDEMNITY**
- 29.1 Without prejudice to any other right of the Company and/or any other indemnities in favour of the Company, the Customer agrees to indemnify and keep the Company indemnified against all liabilities, claims, damages, losses and expenses whatsoever arising from any breach by the Customer of any warranties, undertakings and/or representations given under and/or any failure to comply with any responsibilities and liabilities of the Customer set out in the Contract.
30. **TRADEMARKS AND BRANDING**
- 30.1 The Company shall be entitled to fix to any Equipment any form of marks being the Company's trade marks or other marks (**'the Trade Marks'**). The Customer shall not remove or deface (or allow other to do so) any Trade Marks from any Equipment.
31. **LIMITATION OF LIABILITY**
- 31.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 31.1.1 any breach of these conditions;
- 31.1.2 any use made or resale by the Customer of any of the Equipment, or of any product incorporating any of the Equipment; and
- 31.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 31.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Equipment Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 31.3 Nothing in these conditions excludes or limits the liability of the Company:
- 31.3.1 for death or personal injury caused by the Company's negligence (or that of its employees, agents or contractors); or
- 31.3.2 under section 2(3), Consumer Protection Act 1987; or
- 31.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 31.3.4 for fraud or fraudulent misrepresentation.
- 31.4 Subject to condition 31.2 and condition 31.3:
- 31.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance, non-performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- 31.4.2 the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
32. **TERMINATION**
- 32.1 Without prejudice to any other rights or remedies which the Company may have, the Company may terminate the Contract without liability to the Customer immediately on giving notice to the other if:
- 32.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- 32.1.2 the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing of the breach; or
- 32.1.3 the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- 32.1.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership)

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- has any partner to whom any of the foregoing apply; or
- 32.1.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- 32.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer (other than for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of the Customer);
- 32.1.7 an application is made to court, or an order is made, for the appointment to the Customer of an administrator or if a notice of intention to appoint to the Customer an administrator is given; or
- 32.1.8 a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 32.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 32.1.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 32.1.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 32.1.
- 32.2 On termination of the Contract for any reason the Customer shall immediately pay to the Company:
- 32.2.1 all of the Company's outstanding unpaid invoices and interest;
- 32.2.2 in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which invoice(s) shall be payable immediately on receipt by the Customer.
- 32.3 If the Contract terminates prior to the expiry of the Minimum Period, other than in accordance with the terms of the Contract, the Company shall be entitled to charge for and may submit an invoice for the amounts that would have been charged during the course of the Minimum Period. Such invoice(s) shall be payable immediately on receipt by the Customer.
- 32.4 If the Contract terminates other than in accordance with the terms of Contract, and such termination is not as a result of any breach of contract on the part of the Company, the Company shall be entitled to charge for and may submit an invoice for the amounts that would have otherwise been charged had the Contract terminated in accordance with its terms. Such invoice(s) shall be payable immediately on receipt by the Customer.
- 32.5 The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
33. **ASSIGNMENT**
- 33.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 33.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
34. **FORCE MAJEURE**
- 34.1 The Company reserves the right to defer the date of Delivery or to cancel the Contract or reduce the volume of the Equipment ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 Business Days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
35. **GENERAL**
- 35.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 35.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 35.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 35.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 35.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 35.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
36. **COMMUNICATIONS**
- 36.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 36.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 36.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 36.2 Communications shall be deemed to have been received:
- 36.2.1 if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or
- 36.2.2 if delivered by hand, on the day of delivery; or
- 36.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day;
- 36.2.4 communications addressed to the Company shall be marked for the attention of the Managing Director.