

ECHO CLOUD LIMITED
TERMS AND CONDITIONS FOR HOSTED TELEPHONY SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions ("**Terms**") the following words shall have the following meanings:

Acceptable Use Policy	the acceptable use policy in force from time to time that sets out the terms upon which you may use the Services;
Agreement	the agreement between you and the Company for the supply of the Services in accordance with the Order and these Terms;
Authorised Provider	the Company's authorised third party provider of the Services or Support Services;
Call	a signal, message or communication which can be silent, visual or spoken, excluding text messages;
Charges	the charges as notified to the Customer from time to time and payable by the Customer to the Company for the Services;
Commencement Date	the date of the Agreement;
Company, We, Us, Our	Echo Cloud Limited (Company Number: 16686237) whose Registered Office is at Raleigh House, 9A Wellsway, Keynsham, Bristol, BS31 1HS
Confidential Information	any and all information whether disclosed in written or oral or machine-readable form or otherwise including without limitation information relating to the Company's services, equipment, operations, know-how, trade secrets and information of commercial value;
Configuration Portal	the web based portal used by the Customer to create and manage telephone features;
Connect To Number	the contact number used to connect to the relevant Emergency Services Organisation;
Customer, you	the individual, company, entity, organisation or business that purchases the Services from the Company;
Customer Data	data inputted or supplied by the Customer for, or in the use of, the Services;
Customer Information	any documents or other materials and any data or other information provided by the Customer relating to the Services;
Customer IT	any components of the Customer's IT infrastructure (including but not limited to cabling, systems, hardware and software);
Data Protection Legislation (GDPR)	up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998
Early Termination Fee	means: <p>(i) all Charges that are accrued up to and including the date</p>

	of termination; plus
	(ii) an average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus
	(iii) the total amounts of all Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);
Emergency	a serious situation or occurrence that demands immediate action;
Emergency Call	a Call to 999;
Emergency Calls Access	the service conveying Emergency Calls as described in Clauses 3.10 to 3.14 inclusive and which forms part of the Services;
Emergency Services Database or ESDB	the 999 call routing and address database;
Emergency Services Organisation	the relevant local public police, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in emergencies;
Incoming Calls	calls from the destinations with E.164 numbers made to the Customer;
International Destination Network	a network operated in an overseas country;
IP	internet protocol;
IPR	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Minimum Term	Thirty-six (36) months (or such other minimum period as is set out in the Order) from the Commencement Date;
Ofcom	the Office of Communications or other replacement authority;
Order	the Customer's order for the Services;
Outgoing Calls	calls from the Customer to destinations outside of the Customer's Service subject to the restrictions set out in

Clauses 3.7 to 3.11 inclusive;

Personal Data	personal data, as defined in the DPA;
PRS or Premium Rate Service	a communications service where Call charges include a premium to cover the cost of content and/or an element of the service above the costs and charges attributable to conveyance;
Renewed Term	the renewed term agreed with the Company in writing in accordance with Clause 9.2;
Rental	the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Services, as set out in the Order or as otherwise notified by the Company;
Services	the hosted email, hosted telephony and / or hosted desktop and other managed IT services as set out in the Order that the Company agrees to supply to the Customer;
Service Levels	the standard of performance in respect of the provision of the Services set out in the Schedule;
Subsequent Term	a minimum of twelve (12) months (or such other period set out in the Order);
Support Services	the support services provided by the Company or its Authorised Provider in connection with the Services;
Working Day	08:00 to 17:30 Monday to Friday but excluding public holidays in the United Kingdom.

1.2. **Construction.** In these Terms, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. a reference to **writing** or **written** includes e-mails.
- 1.2.3. a reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2.4. headings in the Agreement shall not affect interpretation.

2. **ORDERS**

- 2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms.
- 2.2. Within 10 days of receipt of an Order or such other time as agreed with the Customer, the Company or its Authorise Provider shall carry out a feasibility check and audit of the Customer's system and/or software.
- 2.3. If, after carrying out a feasibility check and audit of the Customer's system and/or software the Company or its Authorise Provider determines that:
 - 2.3.1. the Customer's system and/or software does not pass the feasibility check and audit it may reject the Order;

- 2.3.2. the Customer's system and/or software passes the feasibility check and audit it may accept the Order.
- 2.4. If the Customer's system and/or software passes the feasibility check the Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or (if earlier) the Company provides the Services to the Customer at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 2.5. Once an Order has been accepted by the Company, the Customer may not cancel an Order.
- 2.6. We may accept or reject an Order at Our sole discretion.
- 2.7. The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Agreement.
- 2.8. These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1. We shall supply the Services to the Customer from the Commencement Date for the Minimum Term and any Renewed Term or Subsequent Term in accordance with these Terms.
- 3.2. The Customer acknowledges that it has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 9.5. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay any applicable Early Termination Fee.
- 3.3. Unless otherwise agreed with the Company in writing, the Services will be provided in the United Kingdom.
- 3.4. We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and We shall notify the Customer in any such event.
- 3.5. The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.6. We do not warrant that the Services will be available without interruption or will be error free.
- 3.7. The Customer acknowledges that:
 - 3.7.1. The Company's ability to perform its obligations under the Agreement is dependent upon the Customer's full and timely cooperation with the Company as well as the accuracy and completeness of any Customer Information the Customer provides to the Company. We shall not be responsible or liable for any delay in providing the Services which arises directly out of the Customer or Customer's failure to perform its obligations hereunder or to co-operate with the Company or to provide complete and accurate Customer Information, all in a timely manner;
 - 3.7.2. unless otherwise agreed by the Company in writing, the Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;

- 3.7.3. We shall not be liable or responsible for any delays, delivery failures or any loss or damage arising out of or resulting from the transfer of data including but not limited to Customer Data, over communications networks and facilities (including the internet) unless caused by an act or omission of the Company;
 - 3.7.4. the Services may be subject to limitations, delays and other problems arising out of the use of such communications networks and facilities;
 - 3.7.5. the Services are not designed to be a carrier interconnect and that the platform for this Service will not support diallers of any description;
 - 3.7.6. scheduled downtime will occur from time to time. We will use Our reasonable endeavours to provide the Customer with at least three (3) Working Days' notice of any scheduled downtime;
 - 3.7.7. the existence of any minor errors in the Services shall not constitute a breach of the Agreement;
 - 3.7.8. some technical limitations with the Services may not become apparent until after the Services have been installed and working for some time;
 - 3.7.9. the Services do not support conveyance of calls to International Destination Networks;
 - 3.7.10. whilst the Services include capabilities which enables it to adhere to regulations including PCI (Payment Card Industry) for card payments, and Ofcom for outbound diallers, neither the Company or its Authorised Providers will be responsible for compliance to any such regulations by the Customer;
 - 3.7.11. it is their responsibility to ensure compliance with the requirements of the telephone preference service. We shall not be responsible for such compliance by the Customer;
 - 3.7.12. use of the Services, may carry certain security risks to the systems and networks of the Customer, the Company and third parties including, but not limited to: misuse; unauthorized access; alterations; theft; fraud; destruction; corruption; and attacks (**Occurrences**). The Customer will, at its own expense, take security measures including but not limited to the use of firewalls, passwords, access restrictions, encryption, policies, and physical access restrictions, to protect from Occurrences all, equipment, software, data and systems located on the Customer's premises or otherwise in the Customer's control and used in connection with the Services, whether owned by the Customer, the Company, or the Company's suppliers. The Customer is responsible for all security measures, even if the Customer uses a third party or the Company to configure and implement them;
 - 3.7.13. We may occasionally suspend the Service for operational reasons (such as maintenance or Service upgrades), major service outages or because of an Emergency, but will use Our reasonable endeavours to give the Customer as much notice as possible; and
 - 3.7.14. the Company or its Authorised Provider may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services and We shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Services.
- 3.8. The Customer will be able to make Calls to any destination unless Call barring has been set up, via the Configuration Portal, in relation to Calls to particular numbers or destinations.

- 3.9. If abnormally high Call volumes are conveyed via the Services for onward termination to an International Destination Network, the Company or the Company's Authorised Provider may instigate network management control measures including but not limited to Call barring.
- 3.10. The Services will not support the following Call types:
 - 3.10.1. Outgoing Calls to
 - 3.10.1.1. Non-E164 PSTN numbers for calls terminating outside of the UK;
 - 3.10.1.2. 070 personal numbering services;
 - 3.10.1.3. dial up internet services; and
 - 3.10.1.4. video calls that require IP to TDM translation.
 - 3.10.1.5. 1XX, 1XXX and 1XXXX codes (excluding directory enquiry services);
 - 3.10.1.6. Premium Rate Services,
 - 3.10.2. Incoming Calls to 070 personal numbering services; and
 - 3.10.3. short message service and text messaging.

Emergency Call Access

- 3.11. An Emergency Call Service will only be available where the Emergency call originates from a calling party located in the UK having a telephone number conforming to the National Telephone Numbering Plan, as set out on the Ofcom website, and being either from a geographic number range or from non-geographic number ranges with a prefix of: 055, 056, 03 or 08.
- 3.12. Subject to the provisions of this Clause, where Emergency Calls are conveyed to the Service platform, the Company or its Authorised Provider will use reasonable endeavours to:
 - 3.12.1. convey Emergency Calls to one of the relevant Emergency Centres;
 - 3.12.2. provide the Customers geographic address locations to the Emergency Services Database, based on the information provided by the Customer in the Order;
 - 3.12.3. if the geographic location of the Emergency Call can be sufficiently identified, provide an onwards connect service to the relevant Emergency Services Organisation via an Emergency Centre telephone operator by means of two-way voice telephony;
 - 3.12.4. liaise and co-operate with the Customer in attempting to resolve problems that may arise; and
 - 3.12.5. assist the Emergency Services Organisations with requests for call-trace in an attempt to identify the geographic location of the Emergency Call and the Customer telephone number if not automatically provided.
- 3.13. If the Company or its Authorised Provider receives an Emergency Call for which it is not possible to clearly confirm the geographic location and appropriate Connect To Number, or the information is incorrect or corrupted, the Company or its Authorised Provider will use reasonable endeavours to convey the Call to a Connect To Number for the appropriate Emergency Services Organisation.

- 3.14. We do not warrant that the Services is, or will be, free from faults, however, the Company or its Authorised Provider will correct faults with the Services which affect Emergency Calls in accordance with the Company or its Authorised Provider's normal engineering practices.
- 3.15. We will supply to the Customer an annual audit file which lists the name and address details of the Customers individual users by telephone number, which are held for 999 verification.
- 3.16. A fair usage policy will apply to the Services with regards to the number of voice channels available.
- 3.17. The Company's employees, agents, Authorised Provider's or sub-contractors are not authorised to make any representations concerning the Services unless confirmed by the Company in writing.
- 3.18. Any advice or recommendation given by the Company or its employees, agents, Authorised Provider's or sub- contractors to the Customer or its employees or agents as to the Services (whether under clause 3.6 or generally) which is not confirmed in writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly We shall not be liable for any such advice or recommendation which is not confirmed in writing.

4. THE COMPANY'S OBLIGATIONS

- 4.1. We shall use reasonable endeavours to meet any performance dates agreed in writing, but any such dates shall be estimates only. We shall not be liable for failure to meet them and time shall not be of the essence for performance of the Services.
- 4.2. We may:
 - 4.2.1. change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and
 - 4.2.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. the Company can change the means or method of providing the Services or the way they are presented, delivered or otherwise made available to the Customer at any time provided that the altered Services shall meet the Service Levels.
- 4.3. We shall give the Customer not less than 1 months' notice in writing of any decision to vary the Services ("Notice of Variation") or discontinue the supply of all or any of the Services ("Notice of Discontinuance"). We shall use Our reasonable endeavours not to vary or cease to provide any service during the term of the Agreement.
- 4.4. In the event that the Company serves a Notice of Variation or Notice of Discontinuance upon the Customer, the Company or its Authorised Provider will continue to provide those Services that are being varied or discontinued and technical support in accordance with Clause 6 during the notice period set out in the Notice of Variation or Notice of Discontinuance.
- 4.5. We shall be entitled (at Our discretion) to make changes to the Service at any time without notice in order to comply with any safety or legal requirement applicable to the Services.
- 4.6. Within fourteen (14) days of receipt of a Notice of Variation or Notice of Discontinuance, the Customer has the right to terminate this Agreement on fourteen (14) days' written notice to the Company if such variation or discontinuance of the Services has a material adverse effect on the Customer's use of the Services.

5. THE CUSTOMER'S OBLIGATIONS

- 5.1. The Customer may only use the Services:

- 5.1.1. in accordance with the Agreement;
 - 5.1.2. in accordance with any instructions provided to the Customer by the Company from time to time; and
 - 5.1.3. for their own internal business use.
- 5.2. The Customer may not resell or commercially exploit any of the Services or content without the prior written consent of the Company.
- 5.3. The Customer shall:
 - 5.3.1. ensure that the terms of the Order are complete and accurate;
 - 5.3.2. ensure that it is aware of and accepts any Acceptable Use Policy before using the Services and observes the Acceptable Use Policy at all times during the term of the Agreement;
 - 5.3.3. ensure that, prior to the Commencement Date, adequate virus protection software is installed on all computer systems to which We will require access for the purpose of performing the Services;
 - 5.3.4. ensure that it provides all Customer Information required by the Company and that all such Customer Information shall be accurate, full and provided in a timely manner;
 - 5.3.5. afford to the Company all access and facilities that We shall reasonably require when attending the Customer's premises;
 - 5.3.6. ensure that its equipment, IT infrastructure and connectivity shall be adequate to enable the Company to efficiently provide the Services;
 - 5.3.7. ensure that We shall have such remote and other access to the systems and infrastructure of the Customer as it shall require to provide the Services;
 - 5.3.8. enter into and maintain contracts directly with such third party providers as may be necessary to enable the Company to provide the Services and ensure that such contracts permit the Company to request resources directly from each provider on behalf of the Customer when required;
 - 5.3.9. keep in place software maintenance agreements with the providers of all supported software applications used by the Customer to ensure adequate assistance from such vendors if required;
 - 5.3.10. take all reasonable precautions to protect the health and safety of the Company's personnel, agents, Authorised Providers and sub-contractors whilst at the Customer's premises;
 - 5.3.11. ensure that it is the owner of or is entitled to use all the Customer IT and equipment which is the subject of the Services to be provided by the Company (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment), or that it is authorised by the owner thereof to make them available to the Company if necessary;
 - 5.3.12. ensure that any equipment connected (directly or indirectly) to or used with the Services is compatible with the Service and where applicable be on the authorised equipment list provided by the Company from time to time. Any equipment not listed as authorised equipment by the Company, where applicable, will not be supported by the Services;

- 5.3.13. ensure that the details of the existing hardware and software it uses and all current licenses it holds for software are complete and accurate;
- 5.3.14. ensure that any software, documentation or manuals (if any) provided by the Company to the Customer to enable the Customer to receive and use the Services, are used for the Customer's internal use only and, except as permitted by applicable law or as expressly permitted under the Agreement the Customer will not, without the Company's prior written consent, copy, de-compile or modify any software, nor copy the manuals or documentation relating to that software, nor knowingly allow or permit anyone else to do so;
- 5.3.15. ensure that all Customer Information and any Customer Data provided by it or stored on, or processed by, the servers of We shall not be obscene, defamatory, likely to result in any claim being made against the Company by any third party, or in breach of the Acceptable Use Policy;
- 5.3.16. not use the Services and will take all reasonable steps to ensure that the Services are not used by anyone:
 - 5.3.16.1. to send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing;
 - 5.3.16.2. contrary to any instructions given by the Company under clause 5.1.2;
 - 5.3.16.3. in a way that does not comply with the terms of any legislation or any licence applicable to the Customer;
 - 5.3.16.4. in a manner that is in any way unlawful, fraudulent or in bad faith or, to the knowledge of the Customer, has any unlawful, fraudulent or bad faith purpose or effect;
 - 5.3.16.5. in a manner that in the Company's reasonable opinion could materially affect the quality of the Services, or any other services, provided by the Company;
 - 5.3.16.6. in a manner which is contrary to Clause 13; or
 - 5.3.16.7. in a manner that that could reasonably be believed to have a detrimental effect on the Company's brand or reputation.
- 5.3.17. keep confidential and secure any user names and passwords provided or enabled by the Company and use them strictly in accordance with any instructions issued by the Company;
- 5.3.18. comply with all rules, regulations, legislation, statutes and laws that are applicable to the Services;
- 5.3.19. comply with all reasonable policies, procedures and practices applicable to the Services and as notified to it by the Company in writing from time to time;
- 5.3.20. indemnify the Company against any losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against the Company as a result of;
 - 5.3.20.1. the Customer's breach of this Clause 5.3;
 - 5.3.20.2. system outages arising out of or in connection with the Customer's breach or non-performance of the Acceptable Use Policy;

- 5.3.20.3. use by the Customer of the Services that causes damage to, interrupts or otherwise prevents the Company from supplying the Services to other customers or complying with obligations owed to other customers;
 - 5.3.20.4. any use of the Services by the Customer that promotes or assists any illegal activity.
- 5.3.21. co-operate with and follow the Company's reasonable instructions to ensure the proper use and security of the Services;
- 5.3.22. permit the Company to use Customer Information for credit checking and debt collection (including disclosure to and use by third parties acting for the Company) and any other uses and disclosures permitted under the DPA and will allow the Company to disclose such information to the extent that the Company is required to do so by law or any relevant authority.
- 5.4. If the Company's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 5.4.1. We shall without limiting Our other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 5.4.2. We shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations under the Agreement; and
 - 5.4.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 5.5. The Customer shall own all rights, title and interest in and to the Customer Information and Customer Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 5.6. Neither the Company nor its Authorised Provider shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data except to the extent caused by the Company's negligence. Notwithstanding any other provision, We shall be entitled (but not obliged) to remove and/or delete (in Our absolute discretion) any Customer Data which it considers does not conform to the Acceptable Use Policy.

6. SUPPORT SERVICES

- 6.1. The Company or its Authorised Provider shall provide 1st line support to the Customer for the Services as follows:
 - 6.1.1. a help desk support facility to the Customer for first line technical support free of charge and in doing so, the Company's Authorised Provider may liaise with the Customer in order to fulfil its obligations under this Clause;
 - 6.1.2. remote engineer support; and
 - 6.1.3. visits to the Customer's sites at times convenient to the Company or its Authorised Provider, such visits to be free of charge in the event that the visit is the result of a fault by the Company, its Authorised Provider or its employees or agents. If the visit is not the result of a fault by the Company, its Authorised Provider or its employees

or agents fault then We may charge for the visit in accordance with Our then current table of charges.

- 6.2. The Customer shall immediately report any fault to the Company's Customer Services Department and provide details of the fault where it will be dealt with in accordance with the agreed fault repair service or the applicable Service Levels. We shall not be obliged to fix any fault if:
 - 6.2.1. the fault arises because the Customer failed to follow any user manual or other documentation available from the Authorised Provider or the Company's oral or written instructions as to the use of the Services or (if there are none) good trade practice;
 - 6.2.2. the defect is caused by improper use of the Services or use outside its normal application.
- 6.3. If the Company agrees to fix a fault:
 - 6.3.1. caused by the circumstances set out in Clause 6.2; or
 - 6.3.2. caused by the Customer; or
 - 6.3.3. that otherwise falls outside the responsibility of the Company; or
 - 6.3.4. where no fault is subsequently found

We may charge the Customer for such work at Our applicable man-hour rate.

7. CHARGES AND PAYMENT

- 7.1. The Customer shall pay the Charges.
- 7.2. We will invoice the Customer monthly in advance and the Customer shall pay the full amount invoiced by direct debit within fourteen (14) days of the date of invoice.
- 7.3. The Customer shall pay the Charges in pounds sterling without set-off or deduction.
- 7.4. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.
- 7.5. Time for payment of the Charges shall be of the essence of the Agreement.
- 7.6. If the Customer fails to make payment in full by the due date, in addition to the Company's right to suspend the Services as set out in Clause 8.1, We may:
 - 7.6.1. withdraw passwords, accounts and/or access to the Services;
 - 7.6.2. charge interest at the rate of 4% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full.
- 7.7. In the event that:
 - 7.7.1. the Company follows instructions with or from the Customer to upgrade or amend the Services; or
 - 7.7.2. the Company agrees to update, increase and/or change the Services in order to resolve the Customer's support issues,

then the Customer shall be responsible for, and shall pay to the Company, the costs incurred by the Company as a result of updating, increasing and/or changing the Services and any associated fees to be paid in respect of such upgrade or amendment.

- 7.8. We will give the Customer as much prior notice as practicable of any alteration to the Charges and in any event not less than 1 month's prior notice of such change.
- 7.9. If the Company becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services to the Customer under the Agreement, We shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.
- 7.10. Where the Company agrees to do work outside a Working Day at the request of the Customer, We may charge the Customer in accordance with the Company's applicable man-hour rate.

8. SUSPENSION AND VARIATION OF THE SERVICES

- 8.1. The Company reserves the right (at its option) to terminate the Agreement or suspend or vary the Services:
 - 8.1.1. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges;
 - 8.1.2. if the Company reasonably believe the Customer has provided false or misleading Customer Information;
 - 8.1.3. the Company needs to modify, expand, improve, maintain or repair the Services;
 - 8.1.4. the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Company; or
 - 8.1.5. the Company considers that there is a significant credit risk;
 - 8.1.6. the Company considers that there is a fraud risk;
 - 8.1.7. the Company's contract with its Authorised Provider to the Services is suspended, varied or terminated.
- 8.2. The re-instatement of suspended Services shall be at the Company's sole discretion and the Customer shall nevertheless be responsible for payment of the Charges during any period where the Services are suspended pursuant to clause 8.1.1, clause 8.1.2 and clause 8.1.4.

Planned Engineering Works

- 8.3. We will provide a minimum of 3 Working Days' notice of all scheduled outages which may impact availability of the Services.

9. TERM AND TERMINATION

- 9.1. The Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and any Renewed Term or Subsequent Term or as otherwise agreed in writing by the Company.
- 9.2. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not;
 - 9.2.1. agreed a Renewed Term; or

- 9.2.2. given notice to the Company in accordance with Clause 9.5

We will continue to supply the Services to the Customer for the Subsequent Term unless the Customer terminates the Agreement as set out in Clause 9.5.

- 9.3. If a Renewed Term has been agreed We will continue to supply the Services to the Customer for the Renewed Term unless the Customer terminates the Agreement as set out in Clause 9.5.
- 9.4. The Customer may:
- 9.4.1. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of four (4) weeks prior written notice to the Company such notice to expire on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be); or
- 9.4.2. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Company.
- 9.5. Without prejudice to any other rights or remedies to which We may be entitled, We may terminate the Agreement without liability to the Customer if:
- 9.5.1. the Customer commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within the following periods from the date of the notice from the Company:
- 9.5.1.1. 7 days where there is a failure to pay a sum due under the Agreement;
- 9.5.1.2. a shorter time, reasonably specified in the notice, in the case of Emergency;
- 9.5.1.3. 48 hours where the Customer is repeatedly in breach of the Agreement (including without limitation repeatedly late in paying sums due under the Agreement) where notice of a previous breach for the same reason has been given;
- 9.5.2. the Customer commits a material breach of any of the terms of the Agreement that is not capable of being remedied; or
- 9.5.3. the Customer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution, or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer.
- 9.6. The Company may, without prejudice to any of its other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing in the event that:
- 9.6.1. the Company is not, for whatever reason, permitted or authorised to provide the Services;

- 9.6.2. the Company reasonably considers that the breach, act, omission or default of the Customer may result in the Company's failure to comply with any applicable legislation or may place the Company in breach of its agreement with its licensors;
 - 9.6.3. use by the Customer of the Services is, or is likely to cause damage to, interrupt or otherwise prevent the Company from supplying the Services to other customers or complying with obligations owed to other customers;
 - 9.6.4. such action is required to comply with a direction from Ofcom or any competent authority to suspend or cease the provision of the Service or any part of it;
 - 9.6.5. such action is required in order to comply with any legislation;
 - 9.6.6. the Company has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 9.7. If the Agreement commences before the Company has completed its credit check of the Customer, We shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Company's credit policy.
- 9.8. The rights to terminate the Agreement given by this Clause 9 shall be without prejudice to any other right or remedy of the Company in respect of the breach concerned (if any) or any other breach.

10. EFFECTS OF TERMINATION

- 10.1. Upon termination or expiry of the Agreement for any reason:
- 10.1.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.2. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;
 - 10.1.3. clauses which expressly or by implication survive termination shall continue in full force and effect; and
 - 10.1.4. unless otherwise agreed in writing by the Company:
 - 10.1.4.1. all rights and licences of the Customer under the Agreement shall terminate; and
 - 10.1.4.2. the Customer shall cease to use, and delete, all instances of the software.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1. Nothing in these Terms shall exclude or limit the liability of either party to the other:
- 11.1.1. for death or personal injury caused as a result of its negligence or the negligence of its employees, agents or subcontractors;
 - 11.1.2. for fraud or fraudulent misrepresentation;
 - 11.1.3. for breach of the terms implied by section 2 of the Supply of Goods & Services Act 1982.

- 11.2. Subject to clauses 11.1 the total liability of the Company to the Customer arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
- 11.2.1. in respect of damage to, or destruction of, tangible property, £500,000; and
 - 11.2.2. in respect of all other damage, loss or liability, £500,000.
- 11.3. Subject to Clause 11.1, We shall not be liable to the Customer for:
- 11.3.1. loss of profits; or
 - 11.3.2. loss of revenue;
 - 11.3.3. loss of income or business;
 - 11.3.4. loss of time;
 - 11.3.5. depletion or loss of goodwill, reputation or similar losses;
 - 11.3.6. loss of anticipated savings;
 - 11.3.7. loss of anticipated profits;
 - 11.3.8. loss of anticipated revenue;
 - 11.3.9. loss of data;
 - 11.3.10. loss of use;
 - 11.3.11. loss of contract;
 - 11.3.12. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.
- 11.4. The Services are not intended to be used for, or in relation to, any purpose which will or may affect the safety or wellbeing of any person and the Company excludes any and all liability whatsoever arising out of, or related to, any such use.
- 11.5. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.6. The provisions of this Clause 11 shall survive termination or expiry of the Agreement.

12. CONFIDENTIALITY AND DATA PROTECTION

- 12.1. During the term of this Agreement and for three (3) years after termination, the Customer shall:
- 12.1.1. keep all Confidential Information confidential;
 - 12.1.2. disclose Confidential Information only to its employees that need to know it for the purposes contemplated by the Agreement; and
 - 12.1.3. use the Confidential Information exclusively for the purposes contemplated by the Agreement. This Clause shall not apply to information that the Customer can prove:
 - 12.1.4. it is in the public domain otherwise than by the Customer's breach;
 - 12.1.5. it already had in its possession prior to obtaining the information directly or indirectly from the Company; or

12.1.6. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use.

12.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.3. The Company's Privacy Notice sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (where Personal Data has the meanings as defined in the Data Protection Legislation) and the Company collects.

12.4. Without prejudice to the generality of Clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Company for the duration and purposes of the Agreement.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. Unless otherwise agreed in writing, all Intellectual Property Rights in and to the Services belong, and shall continue to belong, to the Company and/or its licensors.
- 13.2. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 13.3. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Company or its licensors except as set out in the Agreement. Without prejudice to the right of the Customer or any third party to challenge the validity of any Intellectual Property Rights of the Company or its Authorised Provider, the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Company or its Authorised Provider and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 13.4. This Clause shall survive termination or expiry of the Agreement.

14. FORCE MAJEURE

- 14.1. For the purposes of the Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2. We will not be liable to the Customer for any failure or delay in performing Our obligations under the Agreement or supplying the Services:
 - 14.2.1. as a result of a Force Majeure Event;
 - 14.2.2. if another supplier delays or refuses the supply of an electronic communications service to the Company or any of the Company's suppliers and no alternative service is available at reasonable cost; or
 - 14.2.3. if legal or regulatory restrictions are imposed upon the Company or any of the Company's suppliers that prevent the Company or any of the Company's suppliers from supplying the Service.
- 14.3. If the Force Majeure Event prevents the Company from providing any of the Services for more than 12 weeks, We shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.

15. NOTICES

- 15.1. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 15.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Working Day after transmission.

16. VARIATION

- 16.1. Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Company.
- 16.2. We may change the Agreement at any time by giving at least 14 days' notice before the change takes effect in order to:
- 16.2.1. comply with any legal or regulatory obligation (save where the Company's or its supplier's compliance with that legal or regulatory obligation requires a shorter period of notice);
 - 16.2.2. change the Charges;
 - 16.2.3. protect the use of the Company's Intellectual Property Rights;
 - 16.2.4. introduce new or improved service levels;
 - 16.2.5. introduce process changes, provided that they are not to the Customer's material detriment;
 - 16.2.6. maintain the integrity or security of the Services; or
 - 16.2.7. improve clarity, or make corrections to typographical errors.
- 16.3. In respect of changes to the Agreement made under Clauses 16.2 or 7.8, such changes will not require a new Agreement to be signed by the parties and will take effect at the expiration of the notice.
- 16.4. With respect to any matters **not** falling within Clause 16.2 and 7.8, We shall use Our reasonable endeavours to give the Customer written notice of the proposed changes at least 21 days before the date the changes are proposed to take effect.

17. GENERAL

17.1. Assignment and other dealings.

- 17.1.1. We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights under the Agreement and may subcontract or delegate in any manner any or all of Our obligations under the Agreement to any Authorised Party, third party or agent.

- 17.1.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 17.2. **Severance.** Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 17.3. **Waiver.** Any failure by either party to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent such party from exercising or enforcing such right at a later time.
- 17.4. **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.5. **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 17.6. **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.7. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE

1. SERVICE LEVEL AGREEMENTS (SLAS)

1.1. SLA Definitions

The following SLA's will apply to issue resolution provided that the issue falls within the [Support Demarcation Boundary as defined in the Service Schedule].

Priority 1, Critical Outage

Problems that severely affect call processing service, traffic and require immediate corrective action for example:

- 100% of users cannot access the Services;
- 100% of users cannot connect to voice servers;
- No inbound calls can be placed into Workflows or Campaign Queues;
- No outbound calls can be made from the system.

Priority 2, Major Impact

Problems that cause conditions that significantly affect system operation, maintenance, and administration and require immediate attention. The urgency is less than in critical situations because of a lesser effect on system performance, for example:

- There are call processing issues with a majority group of users (>50% of users);
- The system performance is degraded;
- Administration of service is degraded;
- There is no reasonable workaround.

Priority 3, Minor Impact

Problems which do not significantly impair the functioning of the system and do not significantly affect service to customers, for example:

- Individual agent issues;
- Problem is non-critical or not service affecting;
- There is a reasonable workaround.

Priority 4, Informational

Information needed concerning product capabilities, advice or basic configuration.

This Priority is restricted to "How To...." Questions and therefore handled as non-service impacting, for example Configuration questions:

- Usability issue, documentation problem
- There is an easy workaround or no workaround is required

1.2. Priority Response Time Frames Definitions:

- 1.2.1. **Response:** The time from creation of a ticket until contacted by the Company or its Authorised Provider;
- 1.2.2. **Restoration:** The time from creation of ticket until the Company or its Authorised Provider have restored the Services. If the problem cannot be immediately resolved, the Company or its Authorised Provider may provide a work around until the problem can be resolved;
- 1.2.3. **Resolution:** The time from the creation of a ticket until the Company or its Authorised Provider have a full fix to the issue.

		Target Times			
Level	Category	Response	Restoration	Resolution	Measurement Period
Priority 1	Critical	<2 hours	<4 hours	<8 hours	Mon- Fri 0800:1730
Priority 2	Major	<4 hours	<8 hours	<7 days	Mon - Fri 0800 : 1730
Priority 3	Minor	<1 day	<2 working days	<30 days	Mon - Fri 0800 : 1730
Priority 4	Informational	<5 days	n/a	As needed	Mon - Fri 0800 : 1730

- 1.3. the Company or its Authorised Provider shall use reasonable endeavours to provide a solution within the above target timeframes. For Priority 1, Critical Outage and Priority 2, Major Impact issues, the Company or its Authorised Provider will aim to provide a temporary solution to temporarily fix the fault with the Service while a permanent solution is developed.
- 1.4. Priority 1 issues may be downgraded to Priority 2, and Priority 2 issues may be downgraded to Priority 3, following the application of a temporary solution.
- 1.5. To meet these goals, at the request of the Company or its Authorised Provider the Customer shall ensure that its personnel are onsite and that remote access to the Service, or affected product or system is available to allow remote diagnostics and maintenance.
- 1.6. The Service Levels shall only apply to faults traced to the Company's or its Authorised Provider's Service platform and not to Customer CPE and Customer network connectivity related faults.
- 1.7. It is technically impracticable to provide a fault free Service and We do not undertake to do so.

2. CUSTOMER REPORTING

2.1. To assist the Company in meeting the service levels detailed in paragraph 1 above, when reporting an issue, the Customer shall provide the Company with:

2.1.1. the date and time at which the problem occurred;

2.1.2. the Services which the problem affected;

2.1.3. the impact of the problem on the Services including a detailed description of the issue, including:

2.1.3.1. the components involved, and

2.1.3.2. the activity ID involved in the issue

and any other information that We may reasonably require.

3. SUPPORT BOUNDARY

3.1. For the avoidance of doubt, the Company as part of this Service is not responsible for;

3.1.1. the Customers:

3.1.1.1. PC or Server Hardware; or

3.1.1.2. Operations Systems or Third party software;

3.1.2. the Customers site network configuration

3.1.3. solution administration and configuration including but not limited to creating/maintaining campaigns, users, groups, routing strategies;

3.1.4. dialler management and configuration;

3.1.5. the Customers workstation software replacement, installation or modifications;

3.1.6. access to third party client portals or software;

3.1.7. software outside the Service Management Boundary including but not limited to OS, Virus Scanner, Backup Tools etc.

4. EXCLUSIONS AND EXCEPTIONS

4.1. The following exclusions and exceptions apply to the measurement and calculation of the SLA:

4.1.1. incidents on the Customer's equipment outside of the service boundary;

4.1.2. incidents on BT Applications and / or network and application equipment due to acts or omission of the Customer;

4.1.3. incidents reported by the Customer not observed/confirmed by the Company or its Authorised Provider;

4.1.4. disruptions occurring within pre-notified engineering works window;

- 4.1.5. failure of access from suspension of the Services pursuant to Clause 8 of the Terms for breach of the Agreement by the Customer;
- 4.1.6. outages due to scheduled maintenance are excluded from service level calculations;
- 4.1.7. outages due to unscheduled upgrades, requested by the Customer that cannot be performed during the regularly scheduled maintenance windows;
- 4.1.8. outages due to applicable national laws, customs, or regulations;
- 4.1.9. outages due to incidents of Force Majeure Events;
- 4.1.10. any failure caused by the Customer to (i) action, (ii) inaction, (iii) unavailability of Customer personnel in order to determine and/or isolate the problem including "Customer Pending Status", or (iv) the Customer's delay in installations, or (v) failure caused by the Customer's applications, equipment or supplier;
- 4.1.11. outages whereby the Company or its Authorised Provider is unable to gain access to a the Customer's site, for reasons attributable to the Customer, to carry out necessary repair work; or
- 4.1.12. unavailability of the BT Application and / or Network as a result of problems with environmental conditions including but not limited to power, climate, housing, switch off at the Customer's premises, the Customer's failure to follow agreed procedures, the introduction of unauthorised changes to supplier CPE (if applicable) or failure of the Customer's equipment.