



**GENERAL**  
COMMUNICATIONS

Terms and Conditions 2018

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## **1] General conditions**

1.1 The terms and conditions set out in this part a will apply to each of: (i) the provision of Telephone Network Services (part b), (ii) the sale and supply of Equipment and Software (part c), (iii) the provision of Telephone System Maintenance Services (part d) and (iv) the supply of Mobile Phones, SIM Cards and Mobile Phone Network Services (part e), in addition to the specific terms set out in the relevant Part. In the event of conflict between any provision of this part a and those of parts b, c, d or e, the latter shall prevail to the extent of such conflict. In the event of conflict between the terms of this Agreement and those in your Order Form, the latter shall prevail to the extent of such conflict.

1.2 Definitions of defined terms are set out in Schedule 1.

1.3 Save where otherwise expressly agreed in writing, these shall be the only terms upon which General Communications shall sell to you, and shall supersede and take precedence over any and all standard terms and conditions whatsoever provided by you (whether printed on the reverse of your purchase order, sales invoice or otherwise).

1.4 General Communications may vary the provision of any services provided hereunder in order to maintain or improve their quality, or to comply with any law or regulation.

1.5 Any failure by either General Communications or you to enforce any right shall not be deemed a waiver of such right.

1.6 This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior undertakings, representations or communications, whether oral or written, and General Communications shall not be liable to you for any loss arising from or in connection with any representations, agreements, statements and undertakings made prior to the date of the Agreement other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of General Communications in writing or expressly incorporated or referred to in this Agreement.

1.7 Without prejudice to clause 1.6 above General Communications may at any time vary the terms of this Agreement by giving you at least 28 days' prior written notice. If the variations are of detrimental effect to you in either cost or quality of service you will be offered the opportunity to decline those variations unless they are passed down by any third party including network operators or government body. In the cases of variations by third parties, OFCOM regulations will stipulate if General Communications or you are able to either decline the variations or be released from the agreement without penalty.

1.8 You understand and acknowledge that General Communications is a business to business supplier and you therefore warrant that any purchase of products or services by you from General Communications is for your business use.

## **2] Suspension of services**

2.1 In addition to any other remedy it may have, General Communications may suspend any services provided under this Agreement (without being liable to compensate you):

2.1.1 in the event of a local or national emergency

2.1.2 To comply with a request from a government or other competent authority

2.1.3 To protect or recover essential services

2.1.4 To maintain the quality of General Communications' services

2.1.5 If General Communications reasonably believes that you will fail to pay any amount due to General Communications (whether or not General Communications has issued you with an invoice)

2.1.6 If an event occurs which is beyond General Communications' reasonable control

2.1.7 If you breach any term of this Agreement and that breach is not rectified within 30 days

2.1.8 If General Communications has good reason to suspect fraudulent activity or misuse of General Communications' products or services

2.1.9 For planned or emergency maintenance or repairs

## **3] Termination**

3.1 Either party may terminate part or all of this Agreement or any or all of the services provided hereunder:

3.1.1 Forthwith if the other party commits any material breach of any term of the Agreement and which in the case of a breach capable of being remedied shall not have been remedied within 30 (thirty) days of a written request to remedy the same;

3.1.2 Forthwith if the other party convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

3.1.3 In the circumstances set out at clauses 24.5 or 24.12.

3.2 Either party may terminate this Agreement, or some or all of the services (as the case may be), in accordance with, and subject to, the relevant termination provisions set out elsewhere in this Agreement.

3.3 On termination of this Agreement for whatever reason, you will:

3.3.1 Immediately pay any outstanding invoices and other sums due and payable under this Agreement; and

3.3.2 Be responsible for any engineering reprogramming costs required or desirable for you to use an alternative supplier.

3.4 General Communications may terminate part or all of this Agreement if it reasonably believes that you will fail to pay any amount due to General Communications.

3.5 Any termination of this Agreement will be without prejudice to any other rights or remedies either party may be entitled to at law and will not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

3.6 Where General Communications has offered the customer any subsidy, the customer acknowledges and agrees that upon expiry or termination of the relevant Service Period under which the subsidy has been offered Customer shall forfeit any Subsidy that has not been used at that date. Any subsidy provided is only for the use of purchasing equipment from General Communications, there is no cash alternative.

#### **4| Warranties**

4.1 Subject to the conditions and limitations set out in this Agreement, General Communications' warranty to you in relation to the Equipment and Software supplied to you under Part C shall be in the same terms, for the same period and subject to the same limitations and conditions as is warranted to General Communications by the supplier or suppliers of such Equipment and/or Software.

4.2 Notwithstanding any other provision, General Communications will not be liable to remedy any defect in Equipment or Software (as applicable):

4.2.1 If alterations or repairs have been made to the Equipment or adjustments or modifications have been made to the Software other than by General Communications or person(s) authorised by it;

4.2.2 If caused by misuse or abnormal use, incorrect operating or environmental conditions (including incorrect temperature and/or humidity levels), the temporary or permanent effects of electromagnetic interference or static electricity or mains electrical surges or failures, lightning damage, or any accidental, negligent or wilful cause beyond the control of General Communications ;

4.2.3 If caused by any breach by you of your obligations under any maintenance agreement in respect of the Equipment or any breach by you of your obligations hereunder with respect to the Software;

4.2.4 For as long as the Price for the Equipment or Software or part thereof is overdue for payment.

4.3 General Communications warrants that the Works and/or the Telephone System Maintenance Service and/ or the Telephone Network Services will be performed with reasonable skill and care.

4.4 In no event shall General Communications' liability to you under this clause in respect of Equipment or Software exceed that of General Communications' supplier or suppliers to General Communications.

4.5 With regard to Mobile Phones and SIM Cards, General Communications will pass on to you (to the extent that it is legally able) the benefit of the warranty provided by the manufacturer or supplier of the Mobile Phone or SIM Card (if any). General Communications will not offer or be responsible for any other or additional warranty or condition with regard to Mobile Phones or SIM Cards (save for warranties and conditions which are mandatory in law)

4.6 Except as expressly set out in this Agreement, the warranties set out in this clause are in lieu of all other conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Equipment and Software or the delivery, installation and commissioning thereof, or in respect of the Telephone Network Services, the Telephone System Maintenance Services, the Mobile Phones, SIM Cards or the Mobile Phone Network Services, which are hereby excluded.

#### **5| Liability**

5.1 Except as otherwise expressly set out in this Agreement, the provisions of this clause 5 set out the entire liability of General Communications to you under or in relation to this Agreement, whether in contract (including indemnity), tort (including negligence), statute or otherwise.

5.2 General Communications' maximum aggregate liability shall be limited:

5.2.1 In relation to the provision of the Telephone Network Services, to a refund of General Communications' line rental charges for the period during which you were unable to use the services up to a maximum of £500 per complete year for which the Telephone Network Services have been provided;

5.2.2 In relation to the provision of Equipment and/ or Software and/ or Work and/ or the Telephone System Maintenance Service, or for any other loss, damage or liability under or in relation to this Agreement,

5.2.2.1 In respect of damage to your tangible property resulting from the negligence of General Communications and its employees, agents and sub-contractors, to a maximum of £2,000,000 (two million pounds).

5.2.2.2 In respect of all other loss, damage or liability, to the amount paid by you to General Communication under this Agreement;

5.2.3 In relation to SIM Cards, to £15.00.

5.3 No services provided hereunder can be guaranteed to be fault free but General Communications will use its reasonable endeavours to provide you with a similar standard of service as it provides to its customers generally.

5.4 Notwithstanding any other provision, nothing in this Agreement shall operate to limit the liability of General Communications for death or personal injury caused by its negligence.

5.5 General Communications accepts no liability for claims relating to your ability to use or continue to use a particular telephone number.

5.6 General Communications accepts no liability for any charges incurred by you should your telephone calls be diverted to another service provider, other than when this is due to a negligent act or omission of General Communications.

5.7 If the performance of General Communications' obligations under the Agreement is delayed or impeded by any act or omission of you or your sub-contractors or its agents or any of them or by any reason of force majeure, including but not limited to acts or omissions or regulations of Her Majesty's Government, a Telecoms Maintainer or the network operator, strikes, lock-outs, labour disputes, fire or failure by sub-contractors or suppliers to fulfil their contracts or for any failure or delay on the part of the network operator to carry out any test or other work or any cause (not necessarily similar to the foregoing) beyond its reasonable control, the period for performance of such obligations will be extended by such period as the same has been affected by such cause of delay Provided That the provisions of this clause shall not relieve General Communications from any liability resulting from the failure of sub-contractors or suppliers except where the failure is beyond the reasonable control of the sub-contractor or supplier concerned. General Communications will as soon as practicable after becoming aware of any such delay notify you and will, after removal of the cause, resume performance of its obligations and notify you accordingly.

5.8 General Communications will not be liable to you for loss of profits, business, goodwill, anticipated savings, data or any type of indirect or consequential loss even if such loss were reasonably foreseeable or General Communications had been advised of the possibility of you incurring the same.

5.9 General Communications will not be liable to you for any loss or damage resulting from any delay caused by unfavourable and unforeseen physical conditions or artificial obstructions encountered during performance of any services under this agreement which could not reasonably have been foreseen. General Communications shall inform you in writing as soon as reasonably practicable of the steps it proposes to take to deal with the hazard and if as a consequence extra cost is incurred by General Communications , the amount which should be added to the sums chargeable under this Agreement. General Communications shall not proceed unless and until you have confirmed your acceptance in writing.

5.10 If you attach to the System or Equipment, or allow any third party to attach to the System or Equipment, any equipment or software not approved by General Communications for connection to the System or Equipment, then such attachment and subsequent use shall be at your sole risk and expense and shall nullify any and all warranties given hereunder by General Communications in respect of the Equipment or the Software or its performance or use insofar as any claim made under said warranty is as a result of the your said attachment or use, and you shall indemnify General Communications for any expenses, damages, claims or other costs incurred by General Communications as a result of the said attachment or use.

5.11 Nothing in the preceding clause shall prevent the attachment to the Equipment of type-compatible call information logging equipment and printers therefor duly approved under a general approval, save that in respect of the attachment or use of such equipment General Communications does not warrant the utility of such equipment or its compatibility with the System, Equipment or Software.

5.12 General Communications does not warrant or represent that the System, Equipment or Software is immune from fraudulent or unauthorised intrusion or use (including its interconnection to long distance networks, computer virus or other malicious code of whatever nature) or that the Work, Service or Telephone Network Services will render it immune and accordingly General Communications will not be liable for any loss, damage, cost or expense directly or indirectly occasioned thereby.

5.13 With regard to the provision of the Telephone Network Services, the Equipment, the Software, the Mobile Phones and the SIM Cards, it is acknowledged that General Communications is acting as reseller and will therefore only be liable to you in respect of the foregoing to the extent that General Communications is able to recover the amount of such liability from its supplier.

5.14 With regard to the provision of the Mobile Phone Network Services, it is acknowledged that the contract is between you and the Network Operator, and that General Communications shall have no responsibility or liability therefor.

5.15 Nothing in the Agreement shall operate to exclude or limit any of your rights or General Communications' obligations under English law which it is prohibited from seeking to exclude or limit.

## **6| Mistakes in information**

6.1 General Communications will be responsible for and shall at its own expense correct any discrepancies, errors or omissions in drawings, and any other documentation to be supplied in writing by it unless approved by you and in addition if such discrepancies, errors or omissions are due to the inaccurate drawings or information and decisions supplied by you to General Communications, then you will be responsible and shall pay for all additional costs and expenses occasioned thereby.

## **7| Confidentiality**

7.1 If during the performance of its obligations under this Agreement either party ("the Receiving Party") is exposed to any information of the other ("the Disclosing Party") which the Disclosing Party identifies as being of a confidential or sensitive nature, the Receiving Party shall respect the confidentiality of such information and will not use it save insofar as its use is necessary in the performance of its obligations under the Agreement and the Receiving Party shall not disclose the information to any third party except its employees on a need to know basis.

7.2 The obligations accepted by the Receiving Party under clause 7.1 above shall not apply to any material or information which:

7.2.1 Is already known to the Receiving Party; or

7.2.2 Is public knowledge or enters the public domain without fault on the Receiving Party's part; or

7.2.3 Is lawfully received from a third party; or

7.2.4 Is ordered to be disclosed by a court or other tribunal of competent jurisdiction.

7.3 Both parties will ensure that their respective employees are aware of and comply with these obligations of confidentiality.

## **8| Notices**

8.1 Any notice required to be served under any of the provisions of this Agreement must be in writing. The address for service of General Communications (subject to any change notified by General Communications to you) is the address set out at the head of this Agreement. Your address for service is the address set out on the most recent invoice or such address as has been subsequently notified to General Communications in accordance with this clause.

8.2 A notice will be treated as served as follows:-

8.2.1 In the case of delivery by hand, on the day of delivery except that where that day is not a Working Day, or the delivery is made after 4pm, then it will be treated as served on the next Working Day

8.2.2 In the case of delivery by registered post or recorded delivery, on the date of delivery as proved by the proof of delivery advice issued by Royal Mail (or such other postal service providing a registered or recorded delivery service in place of or in addition to Royal Mail).

8.2.3 In the case of any other method of service, at the time of service actually proved

8.3 In this clause "Working Day" means Monday to Friday but does not include Bank Holidays.

## **9| Early cancellation charges**

9.1 Any cancellation charges or obligations to repay subsidies or cashback in respect of products or services provided by General Communications, shall be cumulative.

## **10| Invalidity and severability**

10.1 If any provision of the Agreement is found by any court or body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision will not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid and unenforceable provision.

## **11| Intellectual property rights**

11.1 General Communications will provide to you the same indemnity in respect of any claim or action that the normal operation, possession or use of the Equipment and/or Software by you infringes the intellectual property rights of any party (an "Intellectual Property Infringement") as is afforded to General Communications by its supplier such that in no circumstances shall General Communications' liability in respect of any Intellectual Property Infringement exceed the liability of its supplier therefor. In no circumstances shall General Communications be required to make any payment to you unless and until it shall have first received funds relating to your loss from its supplier.

11.2 General Communications' indemnity set out above is conditional upon you:

11.2.1 Giving notice to General Communications of any Intellectual Property Infringement forthwith upon becoming aware of the same; and

11.2.2 Acting in accordance with the reasonable instructions of General Communications (and/or its licensor or supplier) and giving to General Communications (and/or its licensor or supplier) such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

11.3 In no circumstances will General Communications have any liability to you in respect of an Intellectual Property Infringement if the same results from:

11.3.1 Any breach by you of any term or obligation under the Agreement; or

11.3.2 The combination, connection, operation or use of the Equipment and/or (as appropriate) the Software with any other equipment or software not supplied or approved by General Communications; or

11.3.3 The modification of the Equipment or Software by you or your contractors (other than General Communications); or

11.3.4 The use of the Equipment or Software other than as expressly authorised by General Communications; or

11.3.5 Information, materials, instructions or specifications provided by you or any third party.

## **12| Contract (rights of third parties act 1999)**

12.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is 11.2.2 giving General Communications (or its licensor or supplier) the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and not at any time admitting liability or otherwise attempting to settle or compromise the said claim or action except upon the express instructions of General Communications.

## **13| Waiver**

13.1 No delay, neglect or forbearance on the part of either party in enforcing its rights or any of them against the other shall be construed as a waiver or in any way prejudice any of its rights hereunder.

## **14| Assignment and licensing**

14.1 You shall not be entitled to assign or transfer the Agreement nor any of its rights or obligations hereunder nor sub-licence the use (in whole or in part) of the Software without the prior written consent of General Communications.

14.2 General Communications shall have the right to assign or delegate any of its rights and obligations under this Agreement upon serving written notice on the Customer.

## **15| Law and jurisdiction**

15.1 This Agreement and any disputes arising out of it will be governed by English law and the courts of England and Wales shall have exclusive jurisdiction.

## **Part b| Conditions specific to the telephone network services**

### **16| General**

16.1 The terms and conditions set out in this Part B will apply to the Telephone Network Services only.

16.2 You acknowledge that certain services are incompatible with the calls and line service available from British Telecom Plc (BT) and such incompatible services are excluded from the Telephone Network Services.

16.3 You also acknowledge that some technical limitations within the network used to provide the Telephone Network Services might not become apparent until the service has been operating for some time. If that occurs, the service may need to be temporarily withdrawn, in which case you will receive a pro rata rebate of the relevant charges paid by you in advance of the withdrawal.

16.4 At General Communications' request you will arrange for your equipment to be reprogrammed by your maintainer in accordance with instructions given by General Communications. General Communications will not bear any responsibility for such reprogramming.

### **17| telephone line rental**

17.1 Unless discounted or waived in writing, installation charges apply.

17.2 The Line Rental shall commence on the Date of Commencement and shall continue for the Minimum Contract Term. After the expiry of the Minimum Contract Term, the Line Rental will continue until terminated by either party giving the other not less than 30 days' notice in writing.

17.3 The fee for the Line Rental service is the monthly rental set out in your signed Order Form but where prices are not listed on the Order Form, line rental will be charged at General Communications' standard rates details of which are available on request.

17.4 You may cancel the Line Rental service before the end of the Minimum Contract Term provided that you pay the monthly service fee in full up until the end of the Minimum Contract Term, or £99, whichever is more. This is in addition to any other charge imposed by virtue of this Agreement.

17.5 In addition, if you terminate the Line Rental prior to the end of the Minimum Contract Term and after your account has been provisioned (unless the termination is for the default of General Communication under clause 3), you will reimburse General Communications for any costs incurred by it in releasing you from your contractual obligations with BT prior to transferring you to the Line Rental service (if applicable), and for any charges for connecting the service

17.6 Where the Line Rental service involves the installation of a new line, General Communications will allocate a telephone number to that line and, unless you notify General Communications that you do not require it, will arrange for one free standard entry to be made in published telephone directories.

17.7 If General Communications has an appropriate agreement with your existing service provider, General Communications can provide, at your request, a telephone line using your existing number as long as

17.7.1 There are no technical reasons preventing the use of that number

17.7.2 The existing service provider agrees to release the number

17.7.3 You authorise General Communications to cancel on your behalf the service on the existing line using that telephone number

17.7.4 You provide General Communications with sufficient information including (but not limited to) the account name, account number, service address, billing address and postcodes

17.7.5 You pay General Communications' charges for number portability and;

17.7.6 Number portability is available.

17.7.7 General Communications shall have no responsibility whatsoever for the acts or failings of BT or BT Openreach, regarding any issues arisen when the porting of existing numbers is required.

#### **18| Connection to the service**

18.1 General Communications will use its reasonable endeavours to arrange for BT Openreach to connect and maintain your line and fix any faults that may occur. General Communications shall have no responsibility whatsoever for the acts or omissions of BT or BT Openreach. You acknowledge that in order to avoid delays occurring in the ordering process, General Communications will need to be notified by BT of any products or services presently in use on your line that are incompatible with the Line Rental service.

18.2 BT is under a strict duty not to disclose information about a customer's telephone services to a third party unless you have consented to such disclosure. In signing the Order Form, you give consent to BT to disclose such information to General Communications.

18.3 You also give General Communications authority to act as your agent to arrange connection onto its services. If General Communications is unable to take over the billing of your line rental, for whatsoever reason, you hereby authorise General Communications to carry your phone calls only through CPS.

18.4 If you want the connection point for the service (i.e. the terminal block, socket for a removable plug, distribution frame or other device which connects your equipment to an exchange line) to be moved to another place within your site, General Communications may agree to this subject to your paying General Communications' applicable charge.

#### **19| Repairs to the telephone network services**

19.1 BT Openreach will continue to maintain your line and will continue to fix any faults that may occur. General Communications will use its best endeavours to correct any defect or fault in the Telephone Network Services (save where the responsibility of any other party) as rapidly as possible. General Communications shall have no responsibility whatsoever for the acts or omissions of BT or BT Openreach. You should report any fault to General Communications' customer services team, where it will be dealt with in accordance with General Communications' fault repair service. The Customer Service and Fault Notification number is 02920 752628.

19.2 General Communications may ask that you have your equipment checked by your own maintainer. If General Communications agrees to fix a fault that is not its responsibility, or if no fault is found, General Communications may charge you for work carried out at its applicable engineer's rates.

19.3 If a fault is found to be due to damage to wiring or equipment owned by you, then General Communications reserves the right to pass on engineering charges that it has incurred, together with its own administration charge of £25 per call out.

#### **20| Broadband service**

20.1 The Broadband service shall commence on the Date of Commencement and shall continue for the Minimum Contract Term. After the expiry the Minimum Contract Term, the Broadband service will continue until terminated by either party giving the other not less than 30 days' notice in writing.

20.2 The fee for the Broadband service is the monthly service fee set out in your signed Order Form.

20.3 You may cancel the Broadband service before the end of the Minimum Contract Term provided that you pay the monthly service fee in full up until the end of the Minimum Contract Term, or £99, whichever is more. This is in addition to any other charge imposed by virtue of this Agreement.

20.4 If you terminate the contracted Broadband service there will be a cancellation charge of £15.

#### **21| Inbound solutions**

21.1 The Inbound Solutions service shall commence on the Date of Commencement and shall continue for the Minimum Contract Term. After the expiry of the Minimum Contract Term, the Inbound Solutions service will continue until terminated by either party giving the other not less than 30 days' notice in writing.

21.2 The fee for the Inbound Solutions service is the monthly service fee set out in your Order Form.

21.3 You may cancel the Inbound Solutions service before the end of the Minimum Contract Term provided that you pay the monthly service fee in full up until the end of the Minimum Contract Term, or £99, whichever is more. This is in addition to any other charge imposed by virtue of this Agreement.

#### **22| Ethernet and EFM network solutions**

22.1 The Ethernet service shall commence on the Date of Commencement and shall continue for the Minimum Contract Term. After the expiry of the Minimum Contract Term, the Ethernet service will continue until terminated by either party giving the other not less than 90 days' notice in writing.

22.2 The fee for the Ethernet service is the monthly service fee set out in your signed Order Form.

22.3 You may cancel the Ethernet service before the end of the Minimum Contract Term provided that you pay the monthly service fee in full up until the end of the Minimum Contract Term, or if there is less than three months remaining until the end of the Minimum Contract term you pay a fee equivalent to three months of the monthly service fee. This is in addition to any other charge imposed by virtue of this Agreement.

22.4 If the decision is made by you to cancel a provision after a survey has taken place but before the service is signed off as live, cancellation charges may apply. These charges will be calculated based on works already carried out and on occasion will be the first year's line rental. If ECCs (excess construction charges) are identified as part of the survey, you will have the ability to cancel the order without penalty if the charges have not been accepted by you already.

22.5 The equipment provided by General Communications or its subcontractors for the delivery of the Ethernet service remains the property of General Communications or its subcontractors.

22.6 You shall provide a suitable place, condition and electricity supply for the equipment provided for the delivery of the Ethernet service.

22.7 You are responsible for the equipment and shall be liable to General Communications for any loss or damage to it save where such loss or damage caused by fair wear and tear, is caused by General Communications or its subcontractors or anyone authorised to act on their behalf. You shall take all reasonable steps to prevent any damage to the equipment and to prevent anyone from adding to it, modifying it or interfering with it in any way

22.8 Any equipment connected to the Ethernet service must be technically compatible with the Ethernet service and connected and used in compliance with any applicable instructions, standards or laws. Any such equipment shall not cause any damage to the network, the Ethernet service, the Equipment, any other customer's network or the network of any underlying service provider.

22.9 Where the service is managed, you agree to only connect equipment to the Ethernet service by using the CPE provided by General Communications or its subcontractors.

22.10 If you become aware that any equipment connected to the Ethernet service does not comply with the relevant instructions, standards or laws you should immediately disconnect the equipment or ensure its immediate compliance. Failure to disconnect non-compliant equipment will result in General Communications disconnecting it at your expense.

22.11 General Communications will not be liable for any failure to meet any service levels or any failure to the Ethernet service or any other obligations if such failure has been found to be caused by the connection of any equipment other than in compliance with clause 22.8.

22.12 In addition to clause 22.8, you agree that you will not use, and will take all necessary precautions to ensure that nobody else uses, the Services and/or the Equipment:

22.12.1 Fraudulently or in connection with any criminal offence;

22.12.2 To send, knowingly receive, upload, download, or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights;

22.12.3 To cause annoyance, inconvenience or anxiety;

22.12.4 To "spam" or to send or provide unsolicited advertising or promotional material or, knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;

22.12.5 In any way which, in our reasonable opinion, is or is likely to be detrimental to the provision of services to you or any of our customers, or to our business and/or reputation;

22.12.6 In contravention of any licences or third party rights, or in contravention of our Acceptable Use Policies; or

22.12.7 In a way that does not comply with any instructions provided to you.

22.13 You may use the Services to link to other networks world-wide, provided that you comply, at all times, with any policies and/or terms and conditions imposed by the operators of such other networks.

22.14 You agree that you will not perform or allow anyone else to perform any unauthorised IP or Port multicasting, spoofing, broadcasting, vectoring, filtering translation or routing.

22.15 Where applicable with wires only services, you agree to:

22.15.1 keep any records of your User Name(s) and/or Password(s) in separate places and take all necessary steps to ensure their security; and

22.15.2 Keep your User Name(s) and/or Password(s) private and confidential and ensure, at all times, that it (or they) do not become known to anyone else.

22.15.3 Notify us immediately if you become aware of any change in circumstances which may lead you to believe that your User Name(s) and/or Password(s) have become known to anyone else.

22.15.4 That General Communications may, from time to time, and, where possible, on giving you reasonable notice, suspend and/or change your User Name(s) and/or Password(s). You also agree that you will not change or attempt to change your User Name at any time.

### **23| Telephone calls and carrier pre-selection (CPS)**

23.1 The Telephone Calls service shall commence on the Date of Commencement and shall continue for the Minimum Contract Term. After the expiry of the Minimum Contract Term, the service will continue until terminated by either party giving the other not less than 30 days' notice in writing.

23.2 Telephone Calls are charged at the rates set out in the Order Form but where prices are not listed on the Order Form calls will be charged at General Communications' standard tariff prices, details of which are available on request.

23.3 If you cancel the Telephone Calls service before it is terminated as described above, you will have to pay whichever the greater is of:

23.3.1. £99, and

23.3.2. An amount equal to the monthly average of the Telephone Call charges for each of the last 3 complete months during which the Telephone Calls service was provided (but if there are less than 3 complete months then the average will be calculated on a weekly basis and the amount payable will be equal to 4 such average weeks). This is in addition to any other charge imposed by virtue of this Agreement.

23.4 General Communications may select and at any time change any carrier or other service provider for the purposes of providing the Telephone Network Service 23.5 In signing the Order Form, you irrevocably authorise General Communications to give all notices, nominations and other authorisations necessary for General Communications to provide the Telephone Network Service.

23.6 Local and national calls are numbers beginning with 01 and 02 only and do not include non- geographic number (0845, 0870 etc) premium rate numbers (09xx) and internet access numbers.

23.7 Mobile calls are calls to Network Operators. Calls to other Network Operators, unless specified otherwise in the Order Form, will be charged at General Communications' standard business tariff.

23.8 All call types where prices are not listed on the Order Form will be charged at General Communications' standard business tariff, details of which are available on request or on General Communications' web site.

### **24| Charges**

24.1 General Communications shall be entitled to charge you the Line Rental Installation Fee and the Telephone Network Services Fees at the rates specified on the Order Form or, if none, as published in General Communications' price lists from time to time. If the prices for any third party products or services comprised in the Telephone Network Services increase for any reason (for example (but without limitation) pursuant to a direction or decision of Ofcom), General Communications reserves the right to increase the Telephone Network Services Fees accordingly. Please note:

24.1.1 Charges are calculated from data recorded by us and not from your own records.

24.1.2 Where a direct debit is unpaid due to insufficient funds or cancellation or an invoice has not been paid by the due date, a £10 administration charge will be included on your next monthly bill.

24.1.3 A charge of up to £25 will be added to your next bill to reinstate telephone services that have been barred due to non-payment of an invoice.

24.1.4 All of General Communications charges (whether referred to in the Order Form, this Agreement or elsewhere) are subject to VAT at the prevailing rate.

### **25| Payment**

25.1 The Line Rental Installation Fee will be invoiced to you upon signing of your Order Form.



25.2 Payment for Telephone Network Services will be collected by monthly direct debit (which you agree to provide and maintain for the Minimum Contract Term), unless otherwise agreed by General Communications. The amount that will be collected will be shown on your monthly invoice.

25.3 When a due date or collection date for payment is not shown in the Order Form or on your invoice, and is not collected by direct debit for any reason, you will make payment in full within 14 days of the invoice date.

25.4 Where possible, you will be notified of any problems with your payments or direct debit instructions

25.5 If any payment is not made in cleared funds by the due date then in addition to the other rights and remedies available to it, General Communications reserves the right to require that all future payments are made by monthly variable direct debit and if you fail to set up such direct debit arrangement, General Communications may terminate or suspend, the Agreement or the service (at its option) by giving you notice.

25.6 Payments are to be made by you without setoff or deduction.

25.7 General Communications shall be entitled to charge for any costs and expenses incurred in the collection of overdue balances.

25.8 Cancellation of the direct debit does not constitute notice of cancellation or termination of the Agreement.

25.9 You are protected at all times by the direct debit guarantee as detailed on General Communications' website [www.GeneralCommunications.tele.com](http://www.GeneralCommunications.tele.com)

25.10 General Communications reserves the right to charge a £5.00 per invoice administration fee for payments tendered by means other than direct debit. General Communications reserves the right to increase this amount without notice.

25.11 General Communications reserves the right to perform a credit check with no prior notice on you, and to pass your credit history onto the credit agencies and/or the Court.

25.12 General Communications reserves the right to request from you at any time a deposit, paid in advance, should periodical credit checks reveal an insufficient credit scoring or County Court Judgment or if unusual usage and call charges are incurred. Should this request not be met within 30 days of notification, General Communications reserves the right to terminate the Agreement and to demand full and immediate payment of all sums payable.

25.13 General Communications may, at its sole discretion and at any time, impose a credit limit on your account. Any credit limit imposed can be amended without prior notice. If you exceed any such credit limit, General Communications may demand immediate payment of the charges and/or suspend the service, and you will still be responsible for all charges incurred including those exceeding the credit limit.

25.14 General Communications shall be entitled to charge a £199 disconnection fee should your Agreement with General Communications or the Telephone Network Services be terminated due to non- or late payment. This will be in addition to any cancellation charges for which you may be liable should you cancel this service before the Minimum Contract Term specified on your order form.

## **26] Your responsibilities**

26.1 You agree:

26.1.1 To use the services and equipment provided in relation to the Telephone Network Services in accordance with this Agreement, with any instructions given by General Communications from time to time and with any laws, regulations and licenses that apply to the use by you of the services;

26.1.2 Not to allow an alternative supplier to override or bypass General Communications' service either through the installation or programming of equipment or through the BT local exchange;

26.1.3 To be responsible for any engineering reprogramming costs or equipment removal costs that may be required to terminate the service of any previous suppliers

26.1.4 Not to use the service to transmit any material, which may be abusive, offensive, obscene, indecent, menacing, defamatory or which might cause annoyance, inconvenience or needless anxiety to anyone or in order to commit a fraud or other criminal offence;

26.1.5 Not to transfer or agree to transfer any number provided to you for use with the service, nor attempt to do so;

26.1.6 To the termination of your existing contract for equivalent services with your current provider;

26.1.7 To provide General Communications with such information as it reasonably requires and to allow access to the site at which the service is to be provided to BT or any other telecommunications supplier to General Communications. You acknowledge that General Communications cannot process the provision of the services until such information is provided and such access is allowed

26.2 You will be responsible for providing the site conditions that are advised to you by General Communications as required for provision of the service including continuous electricity supply, connection points, rack space, containment, internal cabling etc. General Communications will not be responsible for reinstating the site after the installation work has been carried out, other than where damage has been caused by the negligence of General Communications, or of those for whom General Communications is responsible.

## **Part c | Conditions specific to equipment and software supply**

### **27] Premises, place of use and access**

27.1 General Communications will as soon as practicable after the date of your order, supply to you adequate information to enable you to prepare the Premises and the Place of Use for the Work, and to provide in accordance with all local, national and international regulations, as the case may be (inter alia):

27.1.1 A suitable and adequate supply of electrical current and such other utility services as General Communications may require;

27.1.2 All other required electrical and mechanical items and fittings (other than the Equipment and Software);

27.1.3 Such space requirements, clearances and environmental conditions as are necessary for the purposes of the Work;

27.1.4 All necessary wayleaves and planning or other such approvals and consents as may be required in connection with the installation, commissioning and use of the System(s) on the Premises. 27.2 Provided General Communications has complied with its obligations under the clause above, you will at your own expense, ensure that the preparations and provisions

27.2 Provided General Communications has complied with its obligations under the clause above, you will at your own expense, ensure that the preparations and provisions referred to in the clause above are made prior to the scheduled delivery dates(s) of the Equipment and Software to the Premises in accordance with the Programme of Work. In the event that such preparation and provisions are unsuitable for the purpose of the Work as a result of any act or default of any person other than General Communications, its employees, sub-contractors or agents, any reasonable costs and expenses thereby incurred will be recoverable by General Communications from you.

27.3 You will afford to the authorised personnel of General Communications and its sub-contractors, at all reasonable times subject to reasonable prior notice, such access to the Premises (but not necessarily sole access) as may be necessary for the inspection thereof and for the execution of the Work, provided always that you have the right to refuse to admit to, or order the removal from, the Premises, any person employed by or acting on behalf of General Communications or its sub-contractors who in your reasonable opinion, is not a fit and proper person to be on the Premises, provided further that in the event of such refusal to admit or removal, General Communications shall be permitted reasonable additional time to carry out the Work.

27.4 You will at all times be responsible for obtaining all necessary consents and approvals for connection of the System to the public network, for complying with such technical and other regulations imposed as a condition of connection to the network and for payment of all charges from time to time levied by the network operator for connection to the public network and General Communications will not be liable for any loss or damage resulting from breach by you of your obligations as aforesaid or any delay on the part of the network operator to connect the System(s) to the network.

27.5 You will be responsible for disclosing, and shall disclose, to General Communications prior to it commencing the Work, the location of any and all asbestos containing materials.

## **28| Price and payment**

28.1 The Price is exclusive of delivery and VAT (which is payable in addition at the rate prevailing at the date of the VAT invoice).

28.2 You will pay the Price to General Communications free of all deductions whatsoever within 30 days of the date of invoice.

28.3 If you fail to take delivery of any part of the System by the date agreed for delivery, you will be additionally liable for any storage or other costs and expenses incurred by General Communications in rescheduling delivery to a later date.

## **29| Delivery, installation and commissioning**

29.1 Delivery of the Equipment and Software to the Premises is not included in the Price, unless stated in the Order Form.

29.2 General Communications will use its reasonable endeavours to unload the Equipment and Software, undertake the Work and demonstrate that the System is ready for Service in accordance with the Programme of Work. If any part of a System fails to pass the Acceptance Tests, General Communications will rectify such failure, provided always that it will not be deemed to have failed the Acceptance Tests due to minor failures or omissions as do not materially affect the performance of the System(s) Provided Further that General Communications will remain obliged to rectify any such minor failures or omissions as soon as reasonably practicable.

29.3 General Communications will provide you with a requirements template prior to installation. You will be responsible for returning this to General Communications duly completed by the date specified in the Programme of Work. Failure to do this may impact the Ready for Service date. Changes to your requirements requested after the date specified in the Programme of Work, will be undertaken on a best endeavours basis, but could impact upon the Ready for Service date.

29.4 You will be entitled to witness the undertaking of the Acceptance Tests.

## **30| Title and risk**

30.1 Title in the Equipment shall pass to you upon payment in full therefor. Risk in the Equipment will pass to you upon delivery of the Equipment to the Premises.

30.2 You shall not sell, lease, transfer, charge, assign by way of security otherwise deal in or encumber the Equipment until title has passed.

30.3 If either:

30.3.1 You fail to effect payment in full of all sums due hereunder by the due date; or

30.3.2 Prior to the said due date, you convene a meeting of your creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986, or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the your creditors, or if you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of your business or assets, or if a meeting is convened for the purpose of considering a resolution or other steps are taken for your winding up, or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction), then General Communications shall (without prejudice to any other legal remedies it may have) at any time thereafter be entitled without notice to enter upon any premises in which the Equipment or any part thereof is installed, stored or kept or is reasonably believed so to be, and remove the Equipment in respect of which payment has not been made and sell or otherwise deal with or dispose of the same.

30.4 If you sell the Equipment prior to General Communications receiving full payment for the Equipment then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held by you as trustee for General Communications .

30.5 The aforementioned provisions

## **31| Software licence(s)**

31.1 In the event that the supplier of the Software shall require a direct contractual relationship with you (e.g. by means of a click-wrap, shrink-wrap or similar licence), such licence terms shall apply to the supply of the Software by General Communications.

31.2 In the absence of a licence pursuant to the clause above, the Software shall be supplied to you subject to and upon the terms which General Communications is authorised and/or required to sub-licence to customers by its supplier.

31.3 Notwithstanding the foregoing and save as otherwise permitted by law, you will not:

31.3.1 Copy the whole or any part of the Software;

31.3.2 Modify, merge or combine the whole or any part of the Software with any other software nor use any other software with the Equipment;

31.3.3 Assign, transfer, sell the license in the Software nor, lease, rent, charge or otherwise deal in or encumber the Software nor make it available to any third party;

31.3.4 Decompile or reverse compile the whole or any part of the Software or otherwise seek to discover its source code.

31.4 You will keep the Software confidential and limit access to it to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Software and will take all such steps as shall be necessary to ensure compliance by the same with the provisions of this clause.

31.5 The Software contains confidential information of General Communications and its licensor's and all copyright, trademarks and other intellectual property rights in the Software are the sole and exclusive property of General Communications or its licensor at which the service is to be provided to BT or any other telecommunications supplier to General communications. You acknowledge that General Communications can not process the provision of the services until such information is provided and such access is allowed

## **32| Training**

32.1 General Communications will provide such instruction and training for your staff as is set out in the Order Form. General Communications will not be responsible for payment of any hotel or other expenses incurred by your staff in pursuance of any training provided by General Communications.

## **33| Service**

33.1 Subject to the terms and conditions hereinafter appearing General Communications shall provide you with the Telephone System Maintenance Service in relation to the System throughout the Term in accordance with the Service Category.

33.2 You shall notify General Communications in writing of the name of your Contact and any changes of the Contact during the Term.

33.3 General Communications shall only be obliged to provide the Service where the Software being used in or in conjunction with the Equipment is not more than one release behind the most up to date release then available.

33.4 Where General Communications is unable to maintain specified Equipment as a result of the retirement or withdrawal of such Equipment by General Communications or the manufacturer or supplier of such Equipment, General Communications shall cease to be obliged to provide the Service in relation to such Equipment.

33.5 The Term shall commence on the Date of Commencement and shall continue for the Minimum Contract Term, and thereafter from year to year unless and until terminated by either party giving to the other not less than 90 days' notice in writing to expire at the end of the Minimum Contract Term or on any later anniversary of the Date of Commencement.

## **Part d | Conditions specific telephone system to the provision of the maintenance service**

### **34| Response to faults**

General Communications shall be deemed to have responded to a fault at the earliest of:

34.1 The time at which General Communications shall have given advice to you as to action to be carried out by you for the clearance of the fault; or

34.2 The time at which General Communications has carried out remote diagnostic checks; or

34.3 The time at which General Communications has attributed the rectification of the fault to a third party; or

34.4 In the case of a fault which does not affect the operation or use of the System, the time when General Communications has given such advice by telephone as it thinks reasonable for action to be taken by you, pending General Communications' attendance at the Installation Address; or

34.5 The time of arrival of General Communication sat the Installation Address.

### **35| Scope of the service**

35.1 The Service covers the System and peripherals as defined in the Telephone System Maintenance Schedule, which forms part of the Equipment Order Form For the avoidance of doubt, maintenance service specifically excludes the maintenance of any cabling (structured or CW1308 standard blockwiring) or of any data network infrastructure.

35.2 Provision of the Service relating to faults resulting from malfunction or, where applicable, component failure arising from misuse; incorrect environmental conditions including incorrect temperature and humidity levels; manufacture or design faults not rectifiable under manufacturer's or supplier's warranty where such manufacturer or supplier is not General Communications ; mains electrical surges or failures; lightning damage; electromagnetic interference; loss of software caused by you; any other accidental, negligent or wilful damage shall be subject to the payment of Supplementary Charges.

35.3 Where replacement parts are provided by General Communications, the parts removed will become the property of General Communications. General Communications reserves the right to replace or repair parts at its option.

35.4 General Communications may remove all or part of the System from the Premises for the purpose of inspection, testing, repair and/or replacement.

35.5 General Communications is not obliged to provide the Telephone System Maintenance Service at premises other than the Installation Address.

35.6 Where a fault is diagnosed as falling within a third party's responsibility, General communications will provide reasonable assistance to you in expediting rectification by such third party at the earliest possible date.

35.7 Where General Communications provides any services whatsoever which are not comprised in the Telephone System Maintenance Services or the Work or the Telephone Network services or in respect of which General Communications is not able to make a Supplementary Charge, such services shall be provided upon and subject to General Communications' standard terms and conditions for the provision of services.

### **36| Charges**

36.1 The Basic Charges for the Service shall be subject to review in accordance with clauses below.

36.2 Not less than 90 days prior to the expiry of the first anniversary of the Date of Commencement and each subsequent anniversary, General Communications shall be entitled to inspect at its own cost the System for the purpose of auditing the number, specification and configuration of the System and/or the location of the System if other than at the Installation Address and the Basic Charges shall be adjusted (upwards or downwards) to reflect any changes thereto since the Date of Commencement or, as the case may be, the last such audit. Any such adjustment shall take effect on and with effect from the next anniversary of the Date of Commencement. Where any new equipment and/or software is to be covered by the terms of this Agreement following an audit the following provisions shall apply where such equipment has not been installed and commissioned by General Communications , or if such equipment and/or software has been maintained by a third party ("Third Party Products").

36.3 General Communications shall be entitled to inspect/test the Third Party Products prior to acceptance for the Telephone System Maintenance Service;

36.3.1. If such inspection/test reveals that the Third Party Products do not meet the applicable regulatory standards or otherwise, in the reasonable opinion of General Communications, are incapable of being maintained, General Communications shall provide details thereof to you;

36.3.2. If you shall fail to have the necessary corrective work undertaken within three months of the date upon which General Communications provides details thereof as aforesaid General Communications shall be entitled to refuse to incorporate the Third Party Products or any part of them within the terms of this Agreement by notice in writing to you.

36.4 General Communications shall be entitled to make a Supplementary Charge for each inspection/test made prior to acceptance of any Third Party Products.

36.5 Notwithstanding the foregoing, the Basic Charges shall be subject to an annual increase on and with effect from the first anniversary of the Date of Commencement and each subsequent anniversary calculated in accordance with the higher of the prevailing Retail Price Index or 3%.

36.6 You shall pay Supplementary Charges inter alia:

36.6.1 Where General Communications responds to a fault report and no fault is found to exist on the System;

36.6.2. For the undertaking of work as a result of any matter referred to in this document;

36.6.3 Where performance of General Communications' obligations is made more difficult or costly by a breach of your obligations under this Agreement;

36.6.4 Where General Communications provides additional wiring, cabling, or other equipment, or provides replacement wiring, cabling or other equipment where the need for replacement is due to wear and tear, or a cause defined in this document, or any other cause(s) not attributable to the normal operation of the System;

36.6.5 Where General Communications supplies consumable items other than initial supplies (e.g. batteries, printer ribbons);

36.6.7 Where you are in breach of your obligations;

36.6.8 Where performance of General Communications' obligations is made more difficult or costly as a result of introduction of legislation or of regulations or of changes to existing legislation or regulations or because of changes, additions, modifications or variations to the System or operating environment not carried out by General Communications ;

36.6.9 Where equipment not specified in the Order Form is added to, or connected to the System, and is to be included for maintenance under this Agreement;

36.6.10 Where General Communications is required to carry out any moves or changes to and/or affecting the System;

36.6.11 For support of other software, accessories, attachments, machines, systems or other devices not manufactured by General Communications nor listed in the Order Form;

36.6.12 For rectification of lost or corrupted data arising other than from General Communications' own negligence;

36.6.13 For diagnosis and/or rectification or problems not associated with the System;

36.6.14 For loss or damage caused directly or indirectly by operator error or omission;

36.6.15 Where General Communications supplies or provides software or an Upgrade, or other software release or modification, which is not within the Customer's annual entitlement, is not specifically included in the Basic Charge(s);

36.6.16 For installing an Upgrade and for the supply or provision of any hardware as part of or to support an Upgrade, but not, for the avoidance of doubt, for the Upgrade itself;

36.6.17 Any fees or charges charged to General Communications by Mitel for Mitel Software Assurance.

36.7 The Basic Charge in respect of the first year of the Term shall be paid on or prior to the Date of Commencement.

36.8 All subsequent instalments of the Basic Charge shall be paid on or before the last day of the year immediately preceding the next period of 12 months to which the same relate.

36.9 All Supplementary Charges under this Agreement are payable within 30 days of the date of invoice.

36.10 All charges payable hereunder are subject to the addition of VAT at the appropriate rate in force from time to time.

### **37| Your responsibility**

You undertake to and covenant with General Communications:

37.1 To allow General Communications , or its agents, full, convenient and safe access to the System as may be necessary for the proper performance of General Communications' obligations including facilities for vehicle loading and delivery and/or vehicle parking;

37.2 To care for and operate the System in accordance with General Communications' and/or manufacturer's and/or supplier's instructions as applicable;

37.3 Not to repair, adjust or modify the System or alter the alarm categories threshold of the System, provided that you may, subject to prior notification to General Communications, make configuration changes in accordance with and within the limits specified in the manufacturer/supplier's customer documentation;

37.4 Not to connect, other than by General Communications or with General Communications' consent, any other equipment to the System;

37.5 To take all reasonable and proper precautions to protect the health and safety of General Communications' personnel while on your premises;

37.6 To carry out any diagnostic and test routines supplied by General Communications or included in the manufacturer's instructions and to allow General Communications to carry out remote diagnostic tests where appropriate (if such tests are necessitated as a result of your failure to carry them out, General Communications may make Supplementary Charges);

37.7 Promptly to carry out all such action in relation to the System as may be advised by General Communications from time to time;

37.8 To take all reasonable steps to eliminate any cause of a fault as listed in clause 35.2 so far as it shall be within the power of you so to do;

37.9 Not to copy, reproduce, translate, adapt, vary, modify or in any way interfere with the Software (or any part of it) or merge the Software (or any part of it) with other data or systems, no to communicate the same to any third party without General Communications' prior written consent;

37.10 Not to decompile the Software or any part of it, nor permit any third party to do so except to the extent permitted by law;

37.11 To supervise and control the use of the Software in accordance with these terms and to follow all reasonable instructions given by General Communications from time to time with regard to the use of the Software;

37.12 Not to provide or otherwise make available Software in whole or in part in any form to any person other than General Communications' employees without General Communications' prior written consent;

37.13 To maintain adequate records to reflect any programming or other changes carried out to the System and/or the Software as are permitted under the terms of this Agreement and to notify General Communications of any such changes and permit General Communications to have access to such records;

37.14 To effect and maintain adequate security measures to safeguard the Software from theft or access by any person other than your employee acting in the normal course of their employment;

37.15 To provide adequate working space including but not limited to the use of desks, chairs, phones, fax and electronic mail access for the personnel of General Communications, its agents and sub-contractors;

37.16 To provide a suitable and adequate supply of electrical current and such other utility services as General Communications, its agents and sub-contractors may reasonably require;

37.17 Not to employ, contract or in any manner engage any of the employees, contractors or agents of General Communications involved in the provision of the Telephone System Maintenance Service, within 12 months of termination of this Agreement or the Telephone System Maintenance Service (whichever is sooner), howsoever caused;

37.18 To obtain adequate Employer's Liability insurance, Public Liability Insurance and any other necessary policies for the protection of General Communications's personnel and General Communications' property. General Communications shall be entitled to demand to see evidence of these policies at any time during the provision of the Service;

37.19 To disclose to General Communications the location of any and all asbestos containing materials prior to General Communications commencing the Telephone System Maintenance Service.

#### **38| Escalated response**

38.1 Notwithstanding the response times for the Service Category, upon notification to General Communications of any problem covered by the terms of this Agreement, you may request General Communications to respond to such problem sooner than General Communications is otherwise obliged under term of the Service Category (an "Escalated Response").

38.2 General Communications' ability to provide an Escalated Response shall be subject to available resources.

38.3 General Communications' reaction time in relation to the provision of an Escalated Response shall be subject to Agreement between General Communications and you from time to time.

38.4 The provision of each Escalated Response shall be subject to an Escalated Response Charge.

#### **Part e| Conditions specific to mobile phones, SIM cards and mobile network service**

##### **39| Agreement**

39.1 General Communications shall supply you with the Mobile Phone(s) and/or SIM cards and/or associated hardware asset out in your Order Form on the terms and conditions of this Agreement.

39.2 General Communications shall have no obligation to supply you with a Subsidised Mobile Phone or otherwise under this Part E if and until you shall have (i) signed a Network Services Agreement.

##### **40| Prices and payment**

40.1 General Communications shall be entitled to render an invoice for the Mobile Phone(s) and/or SIM Card(s) to you on collection or delivery of the Mobile Phone(s) and/or SIM Card

40.2 You will pay the Price for the Mobile Phone and/or SIM Card within 14 days of the invoice date.

40.3 If you are offered a credit account, General communications will carry out a credit check using a recognised credit reference agency. Any and all sums for which credit is provided shall become due and payable within 14 days of an invoice therefore. Without prejudice to the foregoing, General Communications reserves the right to withdraw, suspend or vary the terms of your credit account at any time. If your credit account is terminated, you will become immediately liable to pay all sums for which credit has been provided.

40.4 General Communications shall have no obligation to replace, repair or accept back Mobile phones or associated equipment once supplied and used, except as provided for in clause 4.

##### **41| Subsidy**

41.1 The Price for a Subsidised Mobile Phone may include a subsidy or benefit from a cashback from the Network Operator.

41.2 In the event that you are in breach of any term of Parts A or Part E of this Agreement or the Mobile Phone Network Services or the Network Services Agreement, you agree to pay to General Communications the full amount of any subsidy or cashback provided to you or received by General Communications from the Network Operator, up to a maximum of 12 months line rental (whichever is the greater) under or in relation to any such Subsidised Mobile Phone, Mobile Phone Network Services or Network Services Agreement.

##### **42| Title, risk and insurance**

42.1 Title to the Mobile Phone and/or SIM Card will pass to you (i) where the Mobile Phone and/or SIM Card has not been subsidised or benefited from cashback, when payment in full has been received by General Communications and (ii) where the Mobile Phone and/or SIM Card is a Subsidised Mobile Phone, at the end of the Minimum Contract Term, provided that in no circumstances will title to the Mobile Phone pass to you if you are or have been in breach of this Agreement (to the extent that it relates to Mobile Phones) or the Network Services Agreement during the Minimum Contract Term. General Communications shall be entitled to recover the Mobile Phone from you if you are in breach of any term of this Agreement and title has not yet passed to you.

42.2 Risk in the Mobile Phone will pass to you when you receive the Mobile Phone. It is your responsibility to insure the Mobile Phone for its full unsubsidised replacement value for the Minimum Contract Term with an insurer of repute and with General Communications' interest noted on the policy.

42.3 You must notify General Communications within 7 days of any loss of, or material damage to, the Mobile Phone.

42.4 You will be required to pay for a new SIM Card if it should be lost or damaged within the Minimum Contract Term at a minimum cost of £15.

##### **43| Network services agreement**

43.1 No contract for the provision of a Subsidised Mobile Phone to you will become binding unless and until you enter into a Network Services Agreement directly with the Network Operator.

43.2 The Network Services Agreement will be between you and the Network Operator, and General Communications shall have no responsibility or liability under or in relation to such agreement or for providing network services.

43.3 It is your responsibility to ensure that your chosen Network Operator provides sufficient network coverage and quality of service, features, support and services to meet your needs. It is also your responsibility to ensure that the tariff and/or package you have chosen is suitable for your needs. General Communications gives no advice and makes no recommendation in this respect and you should be aware that its employees, staff and other representatives have no authority to make any such recommendations or to give advice

43.4 Connection to the network of a Network Operator is outside the responsibility of General Communications. However, it is understood that connection can take up to 72 hours in ordinary circumstances but will be subject to the checks (including, without limitation, credit checks) of the Network Operator.

43.5 The Network Services Agreement will start on the date of Connection and shall continue for the Minimum Contract Term and thereafter until terminated by you in accordance with the Network Services Agreement.

#### **44 | Minimum revenue commitment**

44.1 You agree to meet the agreed Minimum Contract Revenue as set out in the Order form during the Minimum Contract Term. In the event that the agreed Minimum Contract Revenue is not achieved during the Minimum Contract Term, the Minimum Contract Term will be extended until such time as you have incurred the additional revenue to make good the Difference. General Communications may, at its option agree for the Difference to be paid by you in place of an extension to the Minimum Contract Term.

#### **Schedule 1 | Network services agreement**

##### **General interpretation**

- › A reference to a sub-clause, clause or a schedule is a reference to a sub-clause, clause or a schedule in this Agreement.
- › General Communications "including" is to be construed without limitation.
- › Any reference to a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time save to the extent that any such amendment or re-enactment would otherwise increase the liability of General Communications hereunder.
- › Any reference in this Agreement to another Agreement or any deed or other instrument shall be construed to mean that other Agreement, deed or instrument as the same may have been or may be varied, amended, supplemented or novated from time to time.
- › Any reference in this Agreement to the masculine gender shall include the feminine and any reference to the singular shall include the plural and vice versa in each case.
- › The clause and Schedule headings of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement

##### **Acceptance tests**

Means the tests to be carried out by General Communications to ensure the System is ready for Service agreement means this agreement and associated Schedules

##### **Application for services**

Means the form completed and signed by General Communications and you in relation to the Telephone Network Services basic charge(s) means the basic charges(s) agreed in writing subject to adjustment as herein provided

##### **Broadband**

Means all broadband services including ethernet, ADSL and SDSL carrier pre-selection (CPS) is defined as the routing of your phone calls through a carrier other than BT. Your phone line(s) are still maintained by BT engineers but the calls are carried on another network

##### **Charges**

means the Basic Charge(s) and, where applicable, the Supplementary Charges and Escalated Response Charge connection means connection of a Mobile Phone to the Mobile Phone Network Service

##### **Contact**

Means a person nominated in writing by you for the purposes of providing our Service date of acceptance means the date when a System has successfully completed the Acceptance Tests

##### **Date of commencement**

means the date agreed in writing for the commencement of a service or, in the case of Mobile Phones provided under Part E, the later of the date shown on the Order Form and the date of Connection equipment means in (i) the case of equipment supplied under Part C, and (ii) in the case of equipment in relation to which the Telephone System Maintenance Service is to be provided under Part D, the equipment listed in writing on the Order Form

##### **Escalated response charge**

Means the amount determined by General Communications General Communications General Communications telecom limited

##### **Inbound solutions**

means services provided via Non-Geographical Numbers (NGNs), such as 08xx, 03xx and 09xx, interactive voice response, time of day/day of week routing, call queueing and network call recording services installation address means the address at which the Equipment is located and at which the Service is to be performed as set out in writing

##### **Line rental**

Means the provision of apparatus forming part of the network used by General Communications to connect you to a telephone exchange line rental installation fees means General Communications s fees for the provision of the Telephone Network Services, including the cost of the apparatus itself, as set out in the Order Form

##### **Major Service affecting fault**

means the occurrence of a fault causing a significant degradation in the performance of the central processing capability of the Equipment, or as otherwise agreed by us on a per fault basis minimum contract term means the period from the Date of Commencement (during which you will not be able to terminate the relevant service) which is set out in the Order Form, or, in the case of Mobile Phones and Mobile Phone Network Services, the minimum contract term set out in the Network Services Agreement

##### **Minor fault**

Means occurrence of a fault causing a degradation in the performance of the non-central processing capability of the Equipment Mitel software assurance means the warranty and update plan for Software on Mitel products which can be ordered from General Communications but provided direct from Mitel

##### **Mobile phone**

Means a mobile communications device and/or associated hardware normal working hours means 8.00 am to 6.00 pm Monday to Friday, public holidays excepted

**Order form**

means the order form, acknowledgment of order, invoice or other document setting out the products or services which you wish to order and which is agreed by General Communications, and, in the case of Telephone Network Services, the Application for Services form place of use means that the part of the Premises where the Equipment is to be installed and operated

**Premises**

means the place or places at which the System(s) is/are to be installed and where the Work is to be carried out as listed in writing price means the sum for the supply of Equipment and/or Software and/or Mobile Phone and/or SIM Card set out in the Order Form, subject to adjustment as provided in this agreement

**Programme of work**

Means the timing and sequence of events as set out in writing ready for service means installed, commissioned and tested by General Communications and ready for connection to the network

**SIM card**

Means the subscriber identification modular card provided by a Network Operator for use in a Mobile Phone telephone system maintenance network means the service to be provided by General Communications in relation to the System set out in the Order Form

**Telephone network service fees**

Means the fees for the provision of any and all of the broadband services, Inbound Solutions, Telephone Calls and Carrier Pre-Selection

- 1] allocating a service request log number and advising your named contact of the number;
- 2] carrying out, where possible, remote diagnostic checks;
- 3] providing advice by telephone, including advice as to action and checks to be carried out by you;
- 4] attributing the rectification of the fault to a third party. In the event that the actions detailed in paragraphs 2 and 3 do not clear the fault or are considered inappropriate by General Communications and subject to paragraph 4 being inapplicable, General Communications will visit the Installation Address in order to diagnose and attend to the fault.

**Service category**

Means the response times to be provided by General Communications in relation to the Service as agreed in writing, further details of which are specified in Schedule 3.

**Software**

Means all operating systems, utilities and other programs (all in object code form) residing in memories or other storage media and associated documentation (including Upgrades) for use in connection with the Equipment as specified in the document

**Telephone network services**

As the context permits, some or all of the Inbound Solutions, Broadband Services, Telephone Calls, Line Rental and exchange line ancillary services term means the Minimum Contract Term and any extension thereof

**Upgrade**

means any improved, modified or corrected version of Software issued by the manufacturer or software developer from time to time where such version is designated as a new stream of software incorporating new features but not including new or additional software options work means the works relating to the installation, commissioning and/or testing of the System(s) (if any) as is set out in the Order Form

**Schedule 2] The telephone system maintenance service****Hardware maintenance**

General Communications shall operate a Customer Service Centre ("CSC") help desk, which shall be available to you to contact with technical queries and to notify General Communications of faults affecting the System.

You may contact the CSC during operational times as defined in the Service Category selected in Schedule 3. Subject to the terms and conditions set out in this Agreement General communications will use its reasonable endeavours to respond to a fault in or affecting the System within the time scales set out in the appropriate Service Category following receipt of notification of such fault through the System's alarm management system (if purchased) or by your named contact(s) telephoning any of the designated numbers specified in this Agreement, or such other numbers as may be notified to you during the Term.

General Communications reserves the right, in its absolute discretion, to repair or replace all or part of the System in order to rectify a fault affecting the System. Any parts replaced shall become the property of General Communications.

General communications will respond to notification of a fault by:

- 1] Allocating a service request log number and advising your named contact of the number;
- 2] Carrying out, where possible, remote diagnostic checks;
- 3] Providing advice by telephone, including advice as to action and checks to be carried out by you;
- 4] Attributing the rectification of the fault to a third party. In the event that the actions detailed in paragraphs 2 and 3 do not clear the fault or are considered inappropriate by General Communications and subject to paragraph 4 being inapplicable, General communications will visit the Installation Address in order to diagnose and attend to the fault.

**Software**

If a fault appears in the Equipment as a result of a fault in the Software which materially and adversely affects the operation of the Equipment, General Communications shall take all reasonable steps to procure the correction of the fault as soon as possible and reserves the right to issue an Upgrade in order to comply with the above.

The service does not include investigation, diagnosis and/or remedy of faults resulting from:

- › Improper use/operation or neglect of the Software including but without limitation to the generality of the foregoing the use or operation of the Software other than in accordance with the manufacturer/ supplier customer documentation;
- › Failure by you to implement and use recommendations in respect of the Software or solutions to any fault previously advised by General Communications;
- › Failure by you to implement and use any Upgrades;
- › Any alteration, modification, upgrade or merger of the Software (or any part of the Software) made by any person other than General Communications without General Communications' prior written consent;
- › The use of the Software for purposes for which it was not designed;
- › Any event of force majeure occurring as detailed in these terms.
- › Failure of any hardware not supplied or maintained by General Communication under this Agreement;
- › Inaccurate or incomplete data in any input stream;
- › faults which cannot be reproduced; and
- › The use of the Software in combination with any software or materials not supplied by or authorised by General Communications

#### **Upgrades**

General Communications may deliver, install and commission Upgrades on to the System, from time to time.

The following provisions shall apply to the provision of Upgrades:

No Upgrades will be supplied unless you have current Mitel Software Assurance in place relating to the System in question.

The timing of the installation of all Upgrades shall be at General Communications' discretion and your entitlement shall not extend to any more than one Upgrade per System during any 12-month period commencing on the Date of Commencement and on each subsequent anniversary thereof.

You must ensure that you have read any release notes associated with the proposed Upgrade and are happy to proceed based on the information contained therein.

General communications will prepare plans for implementation of the Upgrade and submit them to you for approval, which shall be responded to within 28 days. If no response is received within the said 28 days, your approval shall be deemed to have been given.

Subject to your approval General communications will arrange with you a mutually acceptable date or period for installation and commissioning of the Upgrade at the Installation Address, which shall be carried out by or on behalf of General Communications during Normal Working Hours. Should you require the Upgrade to be performed outside of Normal Working Hours, Supplementary Charges will apply.

You acknowledge that Upgrades are supplied on the understanding that no software is error, or bug, free. Should any defect arise in an Upgrade which materially and adversely affects the operation of the System, then General communications will take all reasonable steps to procure the correction of the fault as soon as possible.

General Communications reserves the right to install new releases of software or revert back to an earlier release in order to comply with the above.

A copy of the manufacturer's Product Bulletin that is issued from time to time and containing information on availability of new Upgrades, will be available from your account manager.

Should you elect not to receive or install an Upgrade, there will be no reduction or discount of the Charges. Where you do not adopt and incorporate all Upgrades so as to ensure that the Software used by you is not more than one release of software behind the most up to date release then available from General Communications, then Supplementary Charges will be payable for the Service. General Communications shall in addition be entitled to exclude any Equipment or Software so affected from the scope of the Service.

Supplementary Charge(s) will be payable by you for hardware when required to support an Upgrade. Upgrades contain confidential information and all copyright, trademarks and other intellectual property rights in the Upgrades are the sole and exclusive property of the manufacturer / software developer or its licensor.

You will not:

- i| copy the whole or any part of the Upgrade;
- ii| modify, merge or combine the whole or any part of the Upgrade with any other software nor use any Upgrade other than with the System;
- iii| assign, transfer, sell the licence for the Upgrade nor, lease, rent, charge or otherwise deal in or encumber the Upgrade nor make it available to any third party;
- iv| reverse compile the whole or any part of the Upgrade from object code into source code

You will keep confidential the Upgrade and limit access to the same to those of its employees, agents and subcontractors who either have a need to know or who are engaged in the use of the Upgrade, and will take all such steps as shall be necessary to ensure compliance by the same with the provisions of this clause.

This licence will terminate automatically and contemporaneously with termination of this Agreement for any reason and in any case with your sale of the System.