

General Conditions

1 DEFINITIONS

1.1 Unless the context otherwise requires, the following definitions shall apply in this Agreement:

"Acceptable Use Policy" means Company's or an applicable Third Party Supplier's acceptable use policy for all or any of the Services, as updated from time to time and made available on Company's website;

"Affiliates" shall mean any entity that directly or indirectly controls, is controlled by or is under common control with, another entity;

"Agreement" means the Key Terms, these General Conditions and any Schedule(s);

"Carrier" means the third party telecommunications operator or network services provider on whose network or infrastructure the Services operate;

"Charges" means the charges payable by the Customer for the Equipment and Services, as detailed in the relevant Schedule(s);

"Confidential information" means all information of a confidential nature that a party has or acquires (whether directly or indirectly) relating to the other party, including the other party's know-how, trade secrets, plans, developments, financial, commercial, technical, tactical, strategic, marketing, operations, customer or product information, personnel information, any information agreed to be or marked as confidential, any other information a party knows, or could be reasonably expected to know, is confidential and any other such information related to or concerning the other party's business;

"Commencement Date" means the dated detailed in the Key Terms;

"Company Price List" means Company's standard price list in place from time to time;

"End-User Licensed Software" means software supplied or supported by a Third Party Supplier which is subject to a licence granted to the Customer permitting its and its users' access and use of such software;

"Equipment" means the equipment to be supplied by Company to the Customer, as detailed in the relevant Schedule(s);

"Fixed Network Service(s)" means electronic communications services including any fixed line telephone service and/or fixed broadband services to be supplied by Company to the Customer, as detailed in the relevant Schedule(s);

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Minimum Revenue Commitment" has the meaning given to it in the Key Terms;

"Minimum Term" means the minimum term detailed in the Key Terms;

"Pre-existing Materials" means all data, documents, software, specifications, reports, programs, information and/or other materials provided or made available by Company or a Third Party Supplier relating to the Equipment and/or Services which existed prior to the commencement of the Agreement;

"Renewal Period" has the meaning given to it in clause 2;

"Schedules" means the schedules incorporated into this Agreement on the Effective Date or subsequently under clause 8;

"Service Level Agreement" means any service level applying to a Service and included as a Schedule;

"Services" means the services to be supplied by Company to the Customer, as detailed in the relevant Schedule(s);

"Site" means the address(es) for delivery of the Equipment and/or performance of the Services, as agreed in the Key Terms or otherwise in writing by the parties;

"Small Enterprise Customer" means a business customer (which is not a communications provider) with no more than 10 employees (whether as employees or volunteers or otherwise);

"Software" means Company's proprietary online software application referred to as "Communicate Support Portal", made available by Company and accessible by the Customer and its users as part of the Services;

"Term" means the Minimum Term and the Renewal Period (if any);

"Termination Fee" means the payment due following termination of the Agreement by the Customer within the Minimum Term or any Renewal Term, as set out in clause 15;

"Third Party Supplier" means the third party selected by Company from time to time to perform the Services and/or to supply the Equipment in whole or part.

1.1.1 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.1.2 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.1.3 words in the singular include the plural and vice versa;

1.1.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.1.5 any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;

1.1.6 writing or written means any communication in legible and non-transitory form, including email; and

1.1.7 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes any subordinate legislation made under that legislation from time to time.

2 COMMENCEMENT AND TERM

2.1 The Agreement shall commence on the Commencement Date and shall continue for the Minimum Term unless terminated earlier by either party in accordance with the terms of this Agreement. Thereafter, the Agreement shall, subject to clause 2.2, automatically renew for consecutive 12 month periods (each a **"Renewal Period"**) unless and until terminated by either party in accordance with the terms of this Agreement.

2.2 Where the Customer is a consumer or is a Small Enterprise Customer and Company is providing Fixed Network Service(s) then the Agreement in relation to such Fixed Network Service only shall automatically terminate at the end of the Minimum Term and the parties shall be entitled to enter into a new agreement in relation to such Fixed Network Services. All Services that are not a Fixed Network Service shall remain subject to clause 2.1.

3 SUPPLY OF EQUIPMENT

3.1 Company shall use reasonable endeavours to deliver the Equipment in accordance with any estimated delivery date for delivery and installation agreed in writing. Installation within such period is not guaranteed and time shall not be of the essence.

3.2 Delivery of Equipment shall be deemed to take place when the relevant Equipment arrives at the Customer's Site prior to unloading or unpacking or on being made available for collection by the Customer ("**Delivery**").

3.3 Company may deliver the Equipment in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.4 Company shall not be liable for any delay in or failure of performance caused by the Customer's failure to: (i) make the Site available, (ii) prepare the Site in accordance with Company's instructions or as required for the Equipment or (iii) provide Company with adequate instructions for performance or delivery.

3.5 If the Customer fails to accept Delivery of the Equipment, Company shall store and insure the Equipment pending Delivery, and the Customer shall pay all reasonable storage and insurance charges incurred by Company in doing so.

3.6 Risk in any Equipment shall pass to the Customer on Delivery and the Customer shall be responsible for insuring the Equipment from that time.

3.7 Ownership of any Equipment contracted to be purchased by the Customer shall not pass to the Customer until such time as the Customer has paid to Company all sums due for the Equipment and any ancillary installation services. Unless and until ownership of the Equipment passes to the Customer (if at all), the Customer shall:

3.7.1 not remove, alter or obscure any identifying mark on or relating to the Equipment or its packaging;

3.7.2 maintain the Equipment in satisfactory condition and ensure it is clearly identifiable as belonging to Company;

3.7.3 not lease, charge or otherwise encumber the Equipment; and

- 3.7.4 not remove the Equipment from the Site without Company's prior written consent.
- 3.8 Customer shall have the benefit of any guarantee or warranty covering any defects in Equipment received by Company from the manufacturer or Third Party Supplier of the Equipment or any extended warranty as specified in each case in the applicable Schedule.
- 3.9 Unless expressly specified in the applicable Schedule, Company makes no warranty or guarantee in connection with the Equipment supplied by it under this Agreement.
- 3.10 Where the parties have agreed for the Equipment to be supplied on a hire only basis, the parties shall enter into a separate hire agreement.
- 4 SUPPLY OF SERVICES**
- 4.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in the Agreement, Company shall supply the Services in accordance with the terms of the Agreement in all material respects.
- 4.2 Company shall commence supplying a Service on the relevant Commencement Date and shall supply those Services for the Minimum Term and thereafter until terminated by either party in accordance with the provisions of the Agreement.
- 5 SERVICE STANDARDS**
- 5.1 Company will supply the Services:
- 5.1.1 with reasonable skill and care; and
- 5.1.2 where applicable, in accordance with the Service Level Agreement.
- 5.2 Company does not guarantee that the Services will be continuously available without interruption and/or fault-free. The Customer acknowledges that faults or errors may occur from time to time.
- 5.3 Company will endeavour to provide the Services subject to technical and commercial feasibility.
- 5.4 Company shall use reasonable endeavours to provide the Services within any time periods and/or by any date indicated to the Customer, but all time periods and dates are estimates and Company shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.
- 5.5 Where the Services do not comply with the terms of this Agreement, Company shall use commercially reasonable endeavours to correct or reperform the Services in accordance with the timeframes described in the Service Level Agreement (if applicable) or, in the absence of a Service Level Agreement, within a reasonable time period.
- 6 THE CHARGES**
- 6.1 The Customer shall pay the Charges by Direct Debit for:
- 6.1.1 each Service (whether or not the Service is used by the Customer);
- 6.1.2 where applicable, the Equipment; and
- 6.1.3 any other products or services agreed between the parties from time to time,
- in accordance with this clause 6. Where the Customer does not pay the Charges by Direct Debit then Company may add a surcharge for any payment by invoice or Credit/Debit Card.
- 6.2 The Customer acknowledges that the Charges have been agreed on the basis that they will be paid by Direct Debit. Where the Customer fails to set up any such Direct Debit then Company may add to its Charges a monthly amount for its administration expenses.
- 6.3 Unless otherwise agreed by the parties in writing, the Charges are as set out in the Schedules or, where relevant, as detailed in the Company Price List at the time the Equipment, Services or other agreed product or service was supplied.
- 6.4 Where relevant, Charges shall be based upon call and billing data recorded by or on behalf of Company and not by any records maintained by the Customer.
- 6.5 The Charges are exclusive of value added tax which, if applicable, will be charged at the prevailing rate.
- 6.6 Unless otherwise stated in the Schedules or the Company Price List:
- 6.6.1 call prices are quoted by the minute;
- 6.6.2 the duration of each call shall be measured in whole seconds, any part thereof will be rounded up to the next whole second;
- 6.6.3 each call shall be charged excluding VAT, based on the duration, the ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice;
- 6.6.4 peak rate call Charges apply from 07:00 to 19:00, Monday to Friday;
- 6.6.5 weekend rate call Charges apply from midnight on Friday to midnight on Sunday;
- 6.6.6 off peak rate call Charges apply at all times when peak rate or weekend rate call Charges do not apply; and
- 6.6.7 all calls are subject to a minimum Charge.
- 6.7 The Customer will be liable for any Charges incurred as a result of unauthorised use of the Services whatsoever and howsoever and whether fraudulently, through misuse or otherwise.
- 6.8 If applicable, where the Customer fails to meet the Minimum Revenue Commitment, Company will apply a charge equal to the difference between the actual spend by the Customer and the Minimum Revenue Commitment on a monthly basis in arrears.
- 6.9 Once the Minimum Term has expired and if the Agreement enters a Renewal Period under clause 2, any discounted pricing offered as part of the Minimum Term will automatically revert to the standard pricing as detailed in the Company Price List.
- 7 INVOICING AND PAYMENT**
- 7.1 Unless otherwise agreed with the Customer, Company may issue to the Customer on a monthly basis one or more invoice(s) which shall set out the Charges due in accordance with the Agreement.
- 7.2 Unless otherwise stated in the Schedules, the Customer shall pay:
- 7.2.1 in advance for connection, subscription, rental and other recurring Charges (including inclusive usage Charges); and
- 7.2.2 in arrears for usage (excluding inclusive usage Charges) and other non-recurring Charges.
- 7.3 If the parties agree that payments of the Charges to Company are to be made by credit card and if payments of such Charges are not made on the due date, Company is authorised to debit the Customer's nominated credit card company with all Charges due and payable to Company.
- 7.4 The Customer shall pay each invoice issued by Company under the Agreement (including any invoice relating to Termination Fees, if applicable) within 14 days of the date of invoice.
- 7.5 The Customer shall pay the Charges (including any Termination Fees, if applicable) in full without any deduction or set off.
- Late payment**
- 7.6 Without prejudice to any other rights of Company, in the event of the Customer failing to pay any sums due to Company on time or at all, notwithstanding notification by Company of the overdue debt to the Customer, Company shall be entitled to:
- 7.6.1 charge interest on amounts overdue from the Customer under the Agreement from the due date until the payment is actually made (whether before and after any judgment) which shall accrue on a daily basis at the rate of 4% per annum over the base rate of Barclays Bank plc for the time being during the relevant period;
- 7.6.2 remove any discounts applied to Services and Equipment (both in arrears and in advance);
- 7.6.3 suspend the provision of the relevant Service(s) until such time as all payments due including all interest accrued has been paid and satisfied in full;
- 7.6.4 treat non-payment as a material breach and terminate the Agreement (in whole or in part) in accordance with clause 15.7 of these General Conditions; and/or
- 7.6.5 charge reconnection fees in line with standard Service(s) connection fee.
- Credit security**
- 7.7 Company reserves the right to set a credit limit on the Charges that can be accrued under the Agreement and Company can review any such credit limit at any time.
- 7.8 Company may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of each 12 month period after the deposit was taken but the decision to return any deposit prior to termination of the Agreement will be at the discretion of Company. Company reserves the right to set off any deposit against the Charges.
- Annual price variation**
- 7.9 During the Term, Company shall automatically apply an annual increase to the Charges up to a maximum amount based on the Consumer Price Index (CPI) plus 5%. Company uses the CPI figure published by the Office for National Statistics (www.ons.gov.uk) in January and will apply the change in April each year. For example, a monthly charge of £100 would become £108 from April based on a January CPI of 3%.
- 7.10 In the event that the rate of CPI is negative, Company will increase the Charges by no more than 5% in the relevant year.
- 8 NEW SERVICES**
- New Equipment and Services**
- 8.1 The initial Equipment and Services are as detailed in the Schedules to this Agreement as of the Effective Date. The Customer may at any time request that Company provides additional Equipment and Services under this Agreement.
- 8.2 Where the Customer makes such a request, Company shall issue new Schedules, detailing the required additional Equipment and/or Services and related Charges. Once the Customer has confirmed acceptance of the new Schedules, they shall be deemed to form part of this Agreement.
- New services on bespoke terms**

8.3 The Customer may request a new service at any time on terms other than those set out in this Agreement. In the event that Company and the Customer agree the terms that would apply to any such new services, those terms will be added to the Agreement by execution of a formal variation in writing to the Agreement.

9 MOVES, ADDS AND CHANGES

9.1 Subject to any specific procedures otherwise set out in the Agreement, the Customer may request a change to the Services by submitting a request in writing, including, but not limited to the following types of changes:

- 9.1.1 additional instances of a Service (e.g. additional landlines);
- 9.1.2 the termination of certain instances of a Service (e.g. disconnection of a mobile);
- 9.1.3 a change from one Service specification to another Service specification; or
- 9.1.4 a change to the location or Site where a Service or Equipment is supplied.

9.2 The change request shall contain sufficient information to enable Company to submit a response.

9.3 Company shall supply to the Customer a written response confirming whether or not Company would be prepared to accept the changes and may specify in such notice:

- 9.3.1 any additional Charges that would result from the change (including any Termination Fees payable in the case of termination of an instance of a Service) and/or any changes to existing Charges;
- 9.3.2 any Customer dependencies relating to the change; and
- 9.3.3 the timescales for the delivery of the change which shall, unless otherwise stated in Company's written response, run from the date on which the Customer notifies Company that it wishes to proceed with the change.

9.4 The Customer shall notify Company in writing within 14 days of the date that it receives Company's response whether or not it would like to proceed with the change. The Agreement shall continue unaffected unless and until a change is agreed by both parties.

10 CUSTOMER OBLIGATIONS

10.1 The Customer shall and shall procure that its users (or anyone having access to the Services), shall:

- 10.1.1 comply with any instructions from Company relating to the use of the Services, including any applicable Acceptable Use Policy;
- 10.1.2 not use the Services in a manner which is inconsistent with a reasonable customer's good faith use of the Services or the network;
- 10.1.3 not use the Services in a manner which, in Company's opinion, will (or is likely to) adversely affect the provision of the Services to the Customer, or to Company's, Third Party Supplier's or Carrier's other customers or users of the network;
- 10.1.4 not use the Services fraudulently or in connection with a criminal offence;
- 10.1.5 not make nuisance calls;
- 10.1.6 not use the Services to send, knowingly receive, store or communicate any material which is unlawful, offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax;
- 10.1.7 not use the Services in a way that contravenes any licence, code of practice, instructions or guidelines by a relevant regulatory authority;
- 10.1.8 not use the Services in a way that is in contravention of a third party's rights (including but not limited to infringement of Intellectual Property Rights);
- 10.1.9 not use the Services to spam or to send unsolicited advertising or promotional material;
- 10.1.10 not use the Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003;
- 10.1.11 not use the Services in a manner which may damage the reputation of Company and/or any Carrier or Third Party Supplier, the reputation of the Services or otherwise bring Company and/or any Carrier or Third Party Supplier into disrepute;
- 10.1.12 not use the Services for the automated processing of personal data as defined in the Data Protection Legislation;
- 10.1.13 hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or to connect to the network;
- 10.1.14 notify Company of any methods of doing business which may affect the Customer's use of the Services or the Customer's ability to comply with the terms of the Agreement;
- 10.1.15 comply with Company's reasonable instructions relating to health, safety, security and use of the network;
- 10.1.16 comply with all applicable laws and regulatory provisions; and
- 10.1.17 not damage Company's, Third Party Provider's or Carrier's systems or the network through the introduction of any virus, worms, trojan

horses, or otherwise prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device.

10.2 Subject to clause 12 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services.

10.3 The Customer shall provide Company with any and all information and/or assistance that Company may require in order to perform the Services. The Customer shall ensure the information is complete and accurate. Company shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide Company with the required information and/or assistance. The Customer shall reimburse Company for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 10.3 that is incomplete or inaccurate.

10.4 The Customer shall notify Company immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services. The Customer shall indemnify Company fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which Company may suffer or incur as a result of any fraud, illegal or improper use (with or without Customer's authorisation) of the Services.

10.5 The Customer agrees and acknowledges that Company, Carrier and/or a Third Party Supplier may monitor and record:

- 10.5.1 calls to 999 and 112 services; and
- 10.5.2 calls or other communications relating to Company's customer services and telemarketing.

10.6 The Customer acknowledges that some of the Services enable access to the internet and that use of the internet is solely at the Customer's risk and subject to all applicable laws. Company has no responsibility for any information, software, services, goods or other materials accessed or obtained by the Customer using the internet.

10.7 The Customer warrants to Company that it will take all reasonable steps (including testing with the latest commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by Company under the Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

11 NUMBERS AND CODES

11.1 Company may allocate the Customer numbers, IP addresses and other codes as per the IT Service Offerings Spreadsheet as set out in the applicable Schedule.

11.2 Nothing in the Agreement shall be construed as to transfer from Company to the Customer ownership of any numbers, IP addresses or other codes or to grant the Customer the right to sell or dispose of a number, IP address or other code. All the Customer's rights to use such IP addresses or other codes will cease upon termination of the Agreement or the relevant Service.

11.3 The Customer acknowledges that Company may change the numbers, IP addresses or other codes it has allocated to the Customer. Company shall (where reasonably practicable) provide the Customer with reasonable notice of such a change.

11.4 The Customer will comply with any and all instructions for use of any number, IP address or other code issued by the third party provider of that number, IP address or other code. Company shall (where reasonably practicable) provide the Customer with reasonable notice of such instructions.

12 CUSTOMER AFFILIATES

12.1 Company acknowledges that the Customer may permit Customer's Affiliate(s) to use the Services supplied under the Agreement. The Customer will procure that its Affiliates are aware of and comply with the terms of the Agreement.

12.2 The Customer shall be liable to Company for any and all claims, losses and expenses suffered or incurred by Company as a result of any acts, omissions or breaches of any term of the Agreement by the Customer's Affiliate(s).

12.3 The Customer's Affiliates shall have no rights to enforce any term of the Agreement.

12.4 The foregoing liabilities shall remain in full force and effect notwithstanding any termination of the Agreement.

13 VARIATIONS TO THE AGREEMENT

13.1 Company reserves the right from time to time to vary the Agreement as follows:

- 13.1.1 Company shall be entitled to vary the Customer Service Charter and/or the Company Price List (including the prices and tariffs set out

- in the Company Price List). Such variations shall be published at <http://www.Communicate.Technology> at least one month before such changes come into effect or, where the variation arises due to changes imposed by third party manufacturers, third party suppliers or a regulatory body, with as much notice as is reasonably practicable; and
- 13.1.2 Company shall be entitled to vary the provisions of the Agreement (including for the avoidance of doubt, the Schedules). Company will provide to the Customer at least one month's notice in writing of any such variation or, where the variation arises due to changes imposed by third party manufacturers, third party suppliers or a regulatory body, provide as much notice as is reasonably practicable.
- Where the changes are in respect of the Fixed Network Services, the Customer may have the right to terminate the Agreement pursuant to clause 15.3.
- 14 SUSPENSION**
- Maintenance and emergencies**
- 14.1 Company may, from time to time and without notice, suspend all or part of the Services in any of the following circumstances:
- 14.1.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Services are provided; or
- 14.1.2 because of an emergency or upon instruction by emergency services any government or appropriate authority; or
- 14.1.3 for the Customer's or users' own security.
- 14.2 Company shall endeavour to restore the Services suspended in accordance with clause 14.1 as soon as reasonably practicable.
- Actions of the Customer and/or fraud**
- 14.3 Company may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:
- 14.3.1 if the Customer fails to comply with the terms of the Agreement after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or
- 14.3.2 if the Customer allows anything to be done which in Company's reasonable opinion may have the effect of jeopardising the operation of the network or the Services, or if the Services are being used in a manner prejudicial to the interests of Company, Carrier and/or a Third Party Supplier of Company and/or Carrier; or
- 14.3.3 if Company has reasonable cause to suspect fraudulent use of the Services (whether by the Customer, its users or Affiliates, or any third party).
- 14.4 If Company has suspended the Services in accordance with clause 14.3, Company shall restore the Services when the circumstance described in clause 14.3 is remedied.
- 14.5 The Customer shall remain liable for:
- (a) all Charges levied in accordance with the Agreement during any period of suspension; and
- (b) all reasonable costs and expenses incurred by Company in the implementation of such suspension or disconnection,
- where such suspension or disconnection arises from the circumstances described in clause 14.1 or 14.3 of these General Conditions.
- 15 TERMINATION**
- Termination for convenience**
- 15.1 The Customer may terminate the Agreement (in whole or in relation to a particular Service) by providing to Company 90 days' notice in writing providing such notice does not expire prior to the expiration of the Minimum Term or Renewal Period applicable to those Services being terminated.
- 15.2 Company may terminate the Agreement (in whole or in relation to a particular Service) by providing to the Customer 90 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.
- Termination resulting from changes to the Agreement**
- 15.3 Subject to clause 15.5, the Customer shall be entitled to terminate a Fixed Network Service by providing 30 days' notice in writing if:
- 15.3.1 Company increases the prices and/or tariffs set out in the Company Price List and/or the Schedule in respect of that Fixed Network Service, except for those increases as specified in clauses 7.9 and 7.10 of these General Conditions; or
- 15.3.2 Company varies the terms of the Agreement that relate to that Service pursuant to clause 13 of these General Conditions (including the Commercial Schedule).
- 15.4 If the Customer fails to notify Company that it wishes to terminate the Contract within 30 days of receiving notice in accordance with clause 15.3 then it shall be deemed to have accepted the change and waived its right to terminate.
- 15.5 The right to terminate a Service in clause 15.3 above shall not apply where:
- 15.5.1 the Service is not a Fixed Network Service;
- 15.5.2 the changes are (i) exclusively to the benefit of the Customer; (ii) of a purely administrative nature and have no negative effect on the Customer, or (iii) directly imposed by law; or
- 15.5.3 where the increases in prices or tariffs or the variation of the terms of the Agreement arises as a consequence of a change in prices, tariffs, terms and/or otherwise imposed by Third Party Suppliers or a regulatory body.
- 15.6 Termination of a Service in accordance with clauses 15.2 or 15.3 of these General Conditions will not affect the Customer's requirement to pay the Charges relating to that Service incurred prior to the date of termination, but, in this event, the Customer shall not be liable for any Termination Fees.
- Termination for cause**
- 15.7 Either party may immediately terminate the Agreement (in whole or in part) by providing notice in writing to the other party in the event that the other party:
- 15.7.1 has committed a material breach of the Agreement that is incapable of remedy; or
- 15.7.2 has committed a material breach of the Agreement that is capable of remedy and that party has failed to remedy that breach within 30 days of being supplied with a written notice specifying the breach and requiring its remedy.
- 15.8 Where Company terminates the Agreement in accordance with clause 15.7, the Customer shall, without limitation to any other remedies available to Company, be liable for the Termination Fees (if any).
- Insolvency**
- 15.9 Either party may immediately terminate the Agreement by providing notice in writing in the event that bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation, is dissolved or otherwise ceases or threatens to cease trading.
- Consequences of termination**
- 15.10 If the Agreement is terminated and the Customer wishes to transfer the provision of the Fixed Network Services to another service provider, Company will provide reasonable assistance to the Customer in respect of the transfer of the Customer's Fixed Network Services in accordance with standard telecommunications industry practice.
- 15.11 Termination or expiry of the Agreement for whatever reason shall not affect:
- 15.11.1 the rights and obligations of the parties which have accrued prior to such termination or expiry; or
- 15.11.2 any provisions of the Agreement which are of a continuing nature and any other provisions of the Agreement necessary for their interpretation or enforcement.
- 15.12 On termination or expiry of the Agreement:
- 15.12.1 any sums properly due from one party to the other will become payable within 30 days of termination (including Termination Fees, where applicable);
- 15.12.2 the Customer shall cease using the Services and return all Equipment (except for any Equipment paid for in full in cleared funds as at the date of termination); and
- 15.12.3 each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.
- Early termination fee**
- 15.13 If the Customer services notice to Company to terminate the Agreement during the Minimum Term or any Renewal Period ("**Early Termination Notice**") other than pursuant to clause 15.3 or 15.7, which Company accepts in its sole discretion, or where Company terminates the Agreement pursuant to clause 15.7, the Customer shall pay to Company an amount equal to the balance of Charges that would otherwise have been due from the Customer for the remainder of the Minimum Service Term or Renewal Period (as appropriate) ("**Termination Fee**").
- 15.14 In the event that Charges are based on usage of the Equipment and/or Services and/or rebates (including call charges and other non-fixed charges) rather than recurring fixed charges, Company shall calculate the Termination Fee as follows:
- 15.14.1 by reference to the average monthly usage charge and/or rebate paid to the Customer by Company during the Minimum Term and/or Renewal Period (as appropriate) up to the date the Customer serves the Early Termination Notice or the date for termination specified in the Early Termination Notice (if later); and
- 15.14.2 where no invoice has been submitted to the Customer prior to the Early Termination Notice, the amount of the estimated spend (divided by 12 where such estimated spend is based upon a year rather than a month).
- in each case multiplied by the number of remaining months (or part thereof) in the Minimum Service Term or Renewal Period.

- 15.15 In addition to the Termination Fee, Company shall be entitled to charge the Customer any administrative charges imposed on Company by the Third Party Supplier(s) and/or Carrier(s) for each Service (including where relevant, each line or connection) which is terminated early other than in the circumstances permitted as per clause 15.13.
- 16 INTELLECTUAL PROPERTY**
- 16.1 All Intellectual Property Rights in the Services, Equipment and Pre-Existing Materials and all parts thereof will be and remain vested in and be the absolute property of Company or its licensors as appropriate.
- 16.2 All information or materials exchanged between Company and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of Company, Company's licensors, Third Party Suppliers or the Customer as applicable and will be returned to the applicable proprietary party on termination of the Agreement, if requested by such party.
- 16.3 During the Term, Company grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, the Software provided by Company solely for use of the Services in the United Kingdom. The Customer undertakes not to copy, alter, adapt, translate, software develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), or otherwise access all or any part of the Software in order to build a product or service which competes with the Software or Services, unless expressly permitted to do so by Company or by relevant law. This licence will terminate on the termination of the Agreement (or any relevant part of the Agreement).
- 16.4 Company grants to the Customer a non-exclusive, non-transferable royalty-free licence for the term of the Agreement to use, copy and reproduce any information or materials provided by Company to the Customer under the Agreement to the extent necessary for the Customer to receive the benefit of the Services. The Customer must not alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by Company or relevant law.
- 16.5 The Customer will not be entitled to and agrees not to:
- 16.5.1 use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of Company (or any of its Third Party Suppliers or Carriers) or any part thereof so that any person might reasonably import a connection between those goods or services and Company (or any of its suppliers) or any part thereof;
- 16.5.2 register or attempt to register as a trade mark anything referred to in this clause 16; and/or
- 16.5.3 authorise any third party to do anything referred to in this clause 16.5.
- 16.6 The Customer agrees not to infringe any Intellectual Property Rights belonging to Company or any third party.
- End User Licensed Software**
- 16.7 The Customer recognises that the Services may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, Company shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End-User Licensed Software.
- 16.8 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within the Agreement relating to the use of End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.
- 16.9 The Customer shall accept and comply with all licence terms required from time to time by any Third Party Supplier of any Software or materials hereunder.
- 17 CONFIDENTIALITY**
- 17.1 Neither party will divulge any Confidential Information of the other party (including without limitation any customers, suppliers, technical or commercial know-how, specifications, or initiatives), except to such of its employees, advisers and agents as may need to know the same for the purposes of the implementation and/or performance of the Agreement, and in each case who agree to be bound by provisions equivalent to those of this clause 17 (or who are under a statutory obligation of confidentiality).
- 17.2 The obligation of confidence set out in this clause 17 shall not apply to any material or information which is:
- 17.2.1 in the public domain (other than as a result of a breach of the Agreement);
- 17.2.2 already known to the receiving party prior to the date of disclosure;
- 17.2.3 lawfully received from a third party who is free to disclose it; or
- 17.2.4 required to be disclosed pursuant to the order of a court or other tribunal or regulatory authority of competent jurisdiction.
- 17.3 The obligation of confidence set out in this clause 17 shall apply in the period commencing on the Commencement Date and ending five years after the termination or expiry of the Agreement.
- 18 LIMITATION OF LIABILITY**
- 18.1 Subject to clause 18.3 of these General Conditions, Company shall not be liable to the Customer in respect of any matter arising out of or in connection with the Agreement in contract or tort (including negligence) or otherwise for any loss of profit, business, revenue, anticipated savings, goodwill, business interruption, from wasted expenditure or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.
- 18.2 Subject to clauses 18.1 and 18.3 of these General Conditions, Company's aggregate liability whether in contract, tort (including negligence), under any indemnity or otherwise arising in connection with the Agreement shall, in connection with each claim or series of connected claims, be limited to an amount equal to total Charges paid by the Customer in the 12 month period prior to the claim arising (or where a claim arises during the first year of the Agreement, the Charges due in the 12 month period commencing on the Commencement Date).
- 18.3 Nothing in the Agreement shall exclude or restrict the liability of either party for:
- 18.3.1 death or personal injury resulting from its negligence;
- 18.3.2 for breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979;
- 18.3.3 any fraud or fraudulent misrepresentation committed or made by it; or
- 18.3.4 any liability which cannot be excluded or restricted by law.
- 18.4 Subject to clause 18.3 of these General Conditions, the express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer, nothing in these General Conditions shall prejudice its statutory rights.
- Liability for Third Parties**
- 18.6 Company shall not be liable to the Customer for any acts or omissions of Carriers that may (wholly or partially) cause, impact or result in any interruption, fault error with or withdrawal of (temporarily or permanently) the Fixed Network Services.
- 18.7 Company shall not be liable for the acts or omissions of Carriers unless such other providers have been specifically engaged by Company as subcontractors or assignees in respect of the performance of Company's obligations under the Agreement.
- 18.8 The Customer shall indemnify and keep indemnified Company from and against any actions, demands, proceedings, claims, costs (including without limitation legal costs), expenses, damages and other losses incurred or suffered by Company in respect of any Carrier or Third Party Supplier claim, demand, penalty or liability, to the extent the same is caused by any breach or threatened breach of the Agreement and/or any applicable licence terms by the Customer or its employees, agents or contractors.
- 19 ASSIGNMENT**
- 19.1 The Customer shall not assign or transfer the Agreement or any of its rights or obligations to any third party without the prior written consent of Company, such consent not to be unreasonably withheld or delayed.
- 19.2 Company may assign, transfer, charge, subcontract or otherwise deal in any other manner with all or any of its rights or obligations under the Agreement (in whole or in part), provided that where Company does subcontract its obligations, Company shall remain liable for the acts and omissions of its subcontractors.
- 20 ENTIRE AGREEMENT**
- 20.1 The Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of the Agreement.
- 20.2 Each of the parties acknowledges and agrees that in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Nothing in this clause shall operate to limit or exclude any liability for fraudulent misrepresentation.
- 21 INVALIDITY**
- If any of the provisions of the Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same

commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

22 WAIVER

The failure or delay by either party to the Agreement to exercise or enforce any right, power or remedy under the Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

23 DATA PROTECTION

23.1 In this clause 23:

23.1.1 "Data Protection Legislation" means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 and the UK GDPR or any successor legislation;

23.1.2 "Personal Data", "Data Subject", "Data Controller" and "Data Processor" shall have the meanings as defined in the Data Protection Legislation; and

23.1.3 "UK GDPR" means the General Data Protection Regulation (EU) 2016/679, as retained in the UK by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

23.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

23.3 The parties acknowledge that for the purposes of the Data Protection Legislation:

23.3.1 Company is the Data Controller of Personal Data relating to individuals through whom it conducts its relationship with the Customer. Further information in this regard can be found in Company's Privacy Policy (which is available at <https://communicate.technology/>); and

23.3.2 the Customer is the Data Controller and Company is the Data Processor, acting on behalf of the Customer in respect of any other Personal Data supplied to Company by the Customer or on behalf of the Customer in the course of the relationship between the parties (whether under this Agreement or otherwise).

23.4 Clauses 23.4 to 23.7 (inclusive) shall apply to any Personal Data (and the processing thereof) where Company is the Data Processor, acting on behalf of the Customer, as detailed in clause 23.3.2.

23.5 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of the Personal Data to and by Company for the duration and purposes of this Agreement.

23.6 Company shall, in relation to any Personal Data processed in connection with the performance by it of its obligations under this Agreement:

23.6.1 process that Personal Data only on the written instructions of the Customer unless Company is required by applicable law to otherwise process that Personal Data;

23.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

23.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

23.6.4 not transfer any Personal Data outside of the European Economic Area or the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or Company has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (c) Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.

23.6.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

23.6.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;

23.6.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by applicable law to store the Personal Data; and

23.6.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 23.

23.7 Where Company uses third party suppliers or subcontractors and where they are acting as a sub-processor in relation to the Personal Data Company shall: (a) enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Agreement to the extent applicable to the nature of the services provided by such Sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Data Protection Legislation; (b) shall remain liable for any act or omission of a sub-processor that does not comply with the data protection obligations as set out in this Agreement; and (c) Company shall inform the Customer of any intended changes concerning the addition or replacement of a sub-processor with access to Personal Data and give the Customer the opportunity to object to such changes.

24 MATTERS BEYOND THE PARTIES' REASONABLE CONTROL

Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of the Agreement (other than payment obligations) due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, default of suppliers or subcontractors including a Carrier, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, failure of a utility service or transport network, breakdown of plant or machinery, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

25 EXPORT CONTROL

25.1 Delivery of the Equipment and/or End-User Licensed Software (as applicable) to the Customer may be subject to export control law and regulations. Company does not represent that any necessary approvals and licences have been obtained or will be granted.

25.2 The Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.

25.3 In the event that the Customer procures mobile Equipment, including tablet devices or similar computer technology from Company, the Customer accepts the terms of the following end-user undertaking: (i) the Customer certifies that it is or will be the end-user of the mobile Equipment and further certifies that it shall use the mobile Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice mobile Services in order to perform their every day contractual duties; (ii) that the mobile Equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; (iii) that the mobile Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; (iv) that the Mobile Equipment, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle activity; and (v) that it agrees to sign a formal "End-User Undertaking" in a format specified by the United Kingdom Department of Trade and Industry if requested to do so by Company.

26 RELATIONSHIP OF THE PARTIES

Nothing in the Agreement shall create, or be deemed to create, a partnership or joint venture between the parties and nothing in the Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

27 NOTICES

Any notice or other communication required or permitted under the Agreement to be given in writing shall be given in writing to the registered address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: (i) when delivered personally; or (ii) if properly addressed and posted by first class mail in the United Kingdom within two working days of posting; or (iii) if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

28 NO THIRD PARTY RIGHTS

Except as otherwise explicitly set out in the Agreement, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. For the avoidance of doubt, Customer's Affiliates shall have no rights to enforce any term of the Agreement.

29 PRIORITY OF DOCUMENTS FORMING THE AGREEMENT

The Agreement includes the following documents:

- (a) these General Conditions;
- (b) the Key Terms;
- (c) the applicable Schedule(s);
- (d) the Company Price List; and
- (e) any other documentation explicitly referred to in the Agreement.

30 CREDIT CHECKS AND FRAUD PREVENTION

30.1 When the Customer applies for Services, Company may check the following records about the Customer and the Customer's business partners:

- 30.1.1 Company's own records;
- 30.1.2 business records at credit reference agencies ("**CRAs**") including both public (including the electoral register) and fraud prevention information. When CRAs receive a search from Company they will place a search footprint on the Customer's business credit file that may be seen by other lenders;
- 30.1.3 records held by fraud prevention agencies ("**FPAs**"); and
- 30.1.4 if the Customer contact is a director, Company may seek confirmation, from CRAs that the residential address that is provided is the same as that shown on the restricted register of directors' usual addresses at Companies House.
- 30.2 Company may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. Company may also make periodic searches at CRAs and FPAs to manage the Customer's Company account.
- 30.3 Company will send information on the Customer's applications, Company account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.
- 30.4 If the Customer does not pay the Charges when they become due and payable, CRAs will record the outstanding debt which shall remain on file for six years after they are closed (whether by settlement or default). Such records may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace the Customer's whereabouts and recover debts owed by the Customer.
- 30.5 If the Customer gives Company false or inaccurate information and Company suspect or identify fraud, Company will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.
- 30.6 Company and other organisations may access and use from other countries the information recorded by fraud prevention agencies.
- 30.7 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Legislation (as defined in clause 23 above). To read the full details of how data may be used please visit our Company Web Site.
- 30.8 The Customer can contact the CRAs currently operating in the UK, including CallCredit (Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414); Equifax PLC, (Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US; 0870 010 0583; www.myequifax.co.uk); and Experian (Consumer Help Service, PO Box 8000, Nottingham, NG80 7WF; 0844 4818000; www.expertian.co.uk). The information they hold may not be the same. They will charge a small statutory fee for access to their records. Details of the relevant fraud prevention agencies are available from provider on request.

31 GOVERNING LAW AND JURISDICTION

The Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.