

TERMS AND CONDITIONS FOR THE PROVISION OF INSTALLATION

AND MAINTENANCE SERVICES

Please read these terms and conditions carefully as they apply (to the exclusion of any other terms and conditions), to our provision of services to you. They include important information relating to the provision of services and form the basis of any agreement between us should you wish to proceed with an order.

1. INTERPRETATION

1.1 In these Conditions:-

“Annual Maintenance Charge”	means the charge for the Maintenance Services set out in the Contract;
“Charges”	means the charges for the provision by the Company of the Installation Services and/or Maintenance Services;
“Company’s Service Centre”	means the Company’s service centre located at Telecom House, Princess Way, Low Prudhoe, Northumberland, NE42 6NJ;
“Contract”	means the contract (subject to these Conditions) to which these Conditions are attached for the Installation Services and/or Maintenance Services
“Conditions”	means the terms and conditions set out below;
“Company”	means BNS Telecom Limited (registered in England and Wales under number 3228233);
“Customer”	means the person set out in the Contract;
“Equipment”	means the equipment to be installed and/or maintained by the Company for the Customer as set out in the Contract;
“Installation Services”	means those services to be performed by the Company to install the Equipment;
“Law”	means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a party is from time to time subject;
“Maintenance Services”	means the repair or reinstatement of the Equipment (in the event of faults to or failures of the same) as the Company reasonably considers necessary to ensure the proper functioning of the Equipment;
“Minimum Period”	means a period of eighty four (84) months from the Service Commencement Date or such shorter period as stated on the Order Form;
“Order Form”	means the Company’s order form completed by (or on behalf of) the Customer and accepted by the Company for the provision of

	Installation Services and/or the Maintenance Services subject to the Contract;
“Price Guide”	means all and any information relating to Charges for the Installation Services and/or Maintenance Services, available on request from the Company;
“Service Commencement Date”	means the date on which the Installation Services and/or the Maintenance Services will commence as set out on the Order Form or the date on which the Contract is signed by the Company, whichever is the later;
“Site”	means the site (or sites) where Equipment subject to the Installation Services and/or Maintenance Services is located;
“Survey”	means any survey or other investigations carried out by or on behalf of the Company that the Company in its absolute discretion deems necessary prior to the provision of the Installation Services and/or Maintenance Services; and
“Working Hours”	means between 9.00am - 5.00pm Monday to Friday (but excluding bank and other public holidays).

1.2 In these Conditions:-

- 1.2.1 any gender includes any other gender;
- 1.2.2 headings shall not affect interpretation;
- 1.2.3 a “person” includes any person, partnership, firm, company (as defined in Section 735 Companies Act 1985), body corporate or corporation (as defined in Section 740 Companies Act 1985) or organisation;
- 1.2.4 any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force; and
- 1.2.5 references to “the Contract”, the “Installation Services” and the “Maintenance Services” or any payment includes any part of any of them.

2. **BASIS OF SERVICES PROVISION**

- 2.1 The Company shall sell and the Customer shall purchase the Installation Services and/or the Maintenance Services set out on the Order Form subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Customer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer’s order or other document will form part of the Contract simply as a result of such document being delivered to the Company or referred to in the Contract.

- 2.3 Any variation to these Conditions is of no effect unless agreed in writing by a director of the Company.
- 2.4 These Conditions constitute the entire agreement between the Customer and the Company for the provision of Installation Services and/or Maintenance Services.
- 2.5 The Company's employees or agents are not authorised to make any representation concerning the Installation Services and/or Maintenance Services unless confirmed by the Company in writing, and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 2.6 Any typographical, clerical or other error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.7 The Customer acknowledges that the Installation Services and/or Maintenance Services are being purchased as part of a business to business transaction and that the Consumer Protection (Distance Selling) Regulations 2000 do not apply.

3. **QUOTATIONS, ORDERS AND SURVEYS**

- 3.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Customer's order by the Company.
- 3.2 Each order for the Installation Services and/or Maintenance Services by the Customer is an offer by the Customer to purchase the Installation Services and/or Maintenance Services subject to these Conditions. To order Installation Services and/or Maintenance Services, the Customer must comply with and submit the Company's standard Order Form.
- 3.3 No Order Form submitted by the Customer by whatever means is accepted by the Company until the Company confirms its written acceptance or (if earlier) the Company supplies the Installation Services and/or Maintenance Services to the Customer.
- 3.4 The Customer must ensure that the terms of any order included on an Order Form are complete and accurate and that the Company is provided with any necessary information relating to the provision of the Installation Services and/or Maintenance Services within sufficient time to enable the Company duly to perform the Contract.
- 3.5 Notwithstanding clause 3.2, if at its discretion the Company accepts an order for Installation Services and/or Maintenance Services placed other than on its standard Order Form (a "Customer Order Form") or if the Company provides Installation Services and/or Maintenance Services without having received from the Customer and/or accepted either the Company's standard Order Form or a Customer Order Form, the Installation Services and/or Maintenance Services shall be provided in accordance with the terms of the Contract.
- 3.6 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to supply the Installation Services and/or Maintenance Services by any requested service date. An order may be cancelled by the Company without liability if the results of any Survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the Installation Services and/or Maintenance Services by the requested service date.

4. **SERVICES PROVISION AND THE USE OF INSTALLATION SERVICES AND/OR MAINTENANCE SERVICES**

- 4.1 The Company shall provide the Installation Services and/or Maintenance Services in accordance with the Contract.
- 4.2 The Customer must promptly supply the Company with all information and materials reasonably required by the Company to enable provision of the Installation Services and/or Maintenance Services.
- 4.3 The Company shall use the reasonable skill and care of a competent telecommunications service provider in providing the Installation Services and/or Maintenance Services. However the Customer accepts that it is technically impracticable to provide the Installation Services and/or Maintenance Services entirely free of faults and the Company does not undertake to do so.
- 4.4 The Customer undertakes to use the Equipment and accommodate the Installation Services and/or Maintenance Services in accordance with such conditions and/or instructions as may be notified in writing to the Customer by the Company from time to time and in accordance with Law and the Contract. The Company may from time to time vary the technical and/or operational procedures for provision of the Installation Services and/or Maintenance Services.
- 4.5 The Company may at its discretion suspend the Installation Services and/or Maintenance Services and/or terminate the Contract if the Customer is in breach of the Contract. The Customer must indemnify and hold harmless the Company against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with such contravention of the Contract, or the Law.

5. **SUPPLY OF INSTALLATION SERVICES**

- 5.1 The Company shall install such Equipment at the Site (or in such other location as may be nominated by the Customer and agreed by the Company in writing) as specified in the Contract.
- 5.2 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to install and connect the Equipment by any requested service date. An order may be cancelled by the Company without liability if the results of any Survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the Installation Services by the requested service date.
- 5.3 The Customer shall provide a suitable location and conditions for the Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense where the Equipment require such services) at the Site so as to enable the Company to supply and continue to supply the Installation Services (without cost to the Company) and shall prepare such Site or location at its own expense in accordance with the Company's reasonable instructions.
- 5.4 At the Customer's request the Company may agree, subject to payment of its applicable Charges and satisfactory Survey, to use for the provision of the Installation Services, cabling and/or wiring already installed at the Site. Where the Customer makes such request the Customer warrants that it has full title to such cabling and/or wiring and that such cabling and/or wiring and their installation meet all applicable standards and specifications notified to

the Customer by the Company. The Customer will provide such written confirmation and/or information in relation to such cabling and/or wiring as the Company reasonably requires.

- 5.5 If the Customer fails for any reason to take delivery of the Equipment or allow the Installation Services to be provided on any agreed delivery or installation date the Company may, in relation to such Equipment, arrange for its storage at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs of such failed delivery and subsequent storage, and in relation to such Installation Services, the Company may charge the Customer a call out fee together with any costs incurred by the Company in relation to such failure by the Customer as a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.
- 5.6 The Company shall use its reasonable endeavours to comply with the Customer's requests in respect of the preferred location of the Equipment but the Company's reasonable decision on this matter shall be final and binding.
- 5.7 The Customer is responsible for the Equipment until the Company has received payment, and also for ensuring at all time the safe keeping and proper use of the Equipment at the Site. Except where such loss or damage is solely attributable to the negligent act or omission of the Company, its employees, sub-contractors or agents the Customer shall indemnify the Company for any loss or damage to the Equipment (including but not limited to lightning or electrical damage). In particular (but without prejudice to the generality of the foregoing and without limitation) the Customer covenants:-
 - 5.7.1 not to cause the Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Company;
 - 5.7.2 to permit the Company or its agent to inspect test and maintain the Equipment at all reasonable times and on reasonable notice.
- 5.8 The Customer must effect and maintain suitable insurance in respect of relevant risks for the Equipment at, on, over or under the Site.
- 5.9 The Company shall have no liability whatsoever for any loss or damage incurred as a direct or indirect result of the Customer's breach of clause 5.7.
- 5.10 Following the provision by the Company of the Installation Services, the Company shall conduct tests to ensure that the Equipment is ready for use. If the Equipment is not ready for use the Company shall either repair or replace, at its sole option, the Equipment or any part thereof and repeat the tests. All tests shall if the Customer so requests be carried out in the presence of the Customer's duly authorised representative provided that such representative is available at such reasonable times as the Company may specify. On successful completion of the tests the Company may require the Customer to sign a form confirming satisfactory completion of the Installation Services. Where the Customer's representative does not sign such form within two working days of being requested to do so, satisfactory completion of the Installation Services shall be deemed to have occurred.
- 5.11 The Customer may by giving not less than 30 days' written notice, request the Company to re-locate the Equipment. The Company shall use all reasonable endeavours to comply with such request. The Customer must pay the Company's reasonable Charges for undertaking any such re-location. At its discretion the Company may require payment of such re-location Charges and any other outstanding Charges prior to commencing any re-location works. At its discretion the Company may instruct the Customer to carry out such preliminary

preparation of the new location prior to the re-location of the Equipment, by the Company, in which event the Customer must carry out such preparation in strict compliance with the Company's instructions. The Company shall have no liability whatsoever for any loss or damage to the Equipment as a result of such re-location.

- 5.12 The Customer may request an upgrade to the Equipment or Installation Services. Subject to availability the Company shall use reasonable endeavours to comply with such request. The Customer must pay the Company's Charges for any upgrade. At its discretion the Company may require payment of such upgrade Charges and any other outstanding Charges prior to the provision of any upgrade Equipment or Installation Services. The provision of all upgraded Equipment and Installation Services is subject to the terms of Contract and these Conditions. For the avoidance of doubt any upgrade in the Equipment and/or Installation Services may result in an increase in the Charges for which the Customer shall not be entitled to terminate the Agreement pursuant to clause 10.5.

6. **SUPPLY OF MAINTENANCE SERVICES**

- 6.1 The Company shall supply the Maintenance Services to the Customer subject to these Conditions. The Customer acknowledges that the Annual Maintenance Charge does not include work necessary to repair or reinstate the Equipment where loss or damage to the Equipment is caused by:-

- 6.1.1 the negligence, misuse, attempted or actual repair, unauthorised adjustment of or tampering with the Equipment by the Customer or any third party;
- 6.1.2 any event or circumstance beyond the Company's reasonable control;
- 6.1.3 accidental or wilful disconnection of the Equipment;
- 6.1.4 faults of a minor or intermittent nature which do not significantly affect the operation of the Equipment;
- 6.1.5 fault in, or other problem associated with, any telecommunications equipment not forming part of the Equipment; and
- 6.1.6 the Customer's failure to comply with any provisions of these Conditions.

In the event that such damage is so caused and the Customer requests the Company to repair or reinstate the Equipment, the Customer shall (unless otherwise agreed in writing by the Company) pay the Company's standard call out and/or repair charges in accordance with clause 9.2.

- 6.2 The Company warrants to the Customer that the Maintenance Services will be performed by appropriately qualified and trained personnel, and in accordance with the standards of a competent telecommunications maintainer with due care and diligence and to such high standard of quality as it is reasonable for the Customer to expect in all the circumstances.
- 6.3 Subject always to clauses 7 and 13, the Company shall use its reasonable endeavours to provide the Maintenance Services to the Customer from or before the date notified to the Customer for the commencement of the Maintenance Services and shall procure that upon receipt of a fault report in accordance with clause 6.4 a qualified technician will (as appropriate) endeavour to rectify the fault remotely and/or attend the Customer's Site or such

other location at which the Equipment is situated in order to attempt to correct any faults in the Equipment within:-

6.3.1 4 (four) Working Hours in the event of a total failure of the Equipment; and

6.3.2 16 (sixteen) Working Hours in the event of any other fault.

6.4 The Customer shall promptly notify the Company's Service Centre by telephone or e-mail of any failure of or fault in the Equipment.

6.5 In the event that the Customer notifies the Company's Service Centre of a fault in the Equipment in accordance with clause 6.4 but no fault is found, the Customer shall (unless agreed otherwise in writing by the Company) pay the Company's standard call out charges and travel expenses in accordance with clause 9.2.

6.6 The Customer shall provide all reasonable assistance to the Company (including access to any Site or such other location at which the Equipment is situate or is to be situate) so as to enable the Company to supply and continue to supply the Maintenance Services.

6.7 The Customer shall ensure that all records provided to the Company by the manufacturer of the Equipment are in order and are available to such qualified technicians from the Company's Service Centre or as may be otherwise nominated by the Company in accordance with clause 16, as may attend the Customer's Site (or such other location at which the Equipment is situate) in accordance with clause 6.3.

6.8 The Customer shall be responsible for all charges made by any telecommunications operator where the Customer connects the Equipment to or uses such telecommunications operator's telecommunications network or other telecommunications services.

6.9 Subject to earlier termination of the Contract in accordance with these Conditions the Company shall supply the Maintenance Services for the Minimum Period.

7. **CANCELLATION AND DELAY**

7.1 No order may be cancelled by the Customer except with the Company's written agreement and on terms that the Customer shall indemnify the Company against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

7.2 If the Customer extends or delays the Contract then the Customer shall indemnify the Company against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges and expenses incurred by the Company as a result of such extension, delay or failure.

7.3 The Company reserves the right to defer the date of performance or to cancel the Contract without liability to the Customer if it is prevented from or delayed in carrying on its business by any cause beyond the Company's reasonable control which includes but shall not be limited to Act of God, explosion, flood, tempest, fire or accident, war or threat of war, terrorist actions, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or

machinery, power failure or breakdown in machinery). In such circumstances, the Customer may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 180 days but in any event shall remain liable to pay for the Installation Services and/or Maintenance Services supplied prior to such cancellation by the Company or the Customer.

- 7.4 In addition to any other remedy available to the Company, in the event that the Company is unable to perform its obligations pursuant to this Contract as a result of the Customer's breach of contract, delay or other default, the Company shall be entitled to retain any deposit or down payment received from the Customer notwithstanding such non-performance as a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.

8. **CHARGES**

- 8.1 The Charges for the Installation Services and/or Maintenance Services are as specified in the Contract or in accordance with the Company's Price Guide in the event of additional Installation Services and/or Maintenance Services.
- 8.2 The Company reserves the right at any time before delivery or performance to amend the Charges for the Installation Services to take into account any variation in cost to the Company or resulting from any Survey.
- 8.3 The Charges are exclusive of any applicable VAT.
- 8.4 Charges for the Installation Services and/or Maintenance Services are as specified in the Contract or as otherwise agreed in writing (including the Order Form). Notwithstanding the aforesaid, Charges are subject to confirmation by the Company. If following any Survey (or other investigation) the Company concludes that it will incur unusual additional costs in providing the Installation Services and/or Maintenance Services, the Company shall be entitled, on notification to the Customer, to increase the Charges by the amount of such costs. Where the Customer does not accept such increased Charges, the Contract will come to an end.
- 8.5 Other than as set out in clause 8.4 the Company may increase or implement new Charges by giving the Customer 30 days' written notice. Without limitation such notice may be contained in billing information provided to the Customer by the Company. Within 7 days of such notification the Customer may give notice to the Company to terminate the Agreement. If the Customer does not terminate in such period the Customer is deemed to have accepted the increase/new Charges. The Company may decrease charges at any time without notice and the Customer shall have no right to terminate the Agreement.

9. **PAYMENT OF THE CHARGES**

- 9.1 Payment of the Charges for the Installation Services (unless otherwise agreed in writing by a director of the Company) shall become due on delivery and/or installation of the Equipment.
- 9.2 Payment of the Annual Maintenance Charge for the Maintenance Services (unless otherwise agreed in writing by a director of the Company) shall become due on the Service Commencement Date and on each subsequent anniversary of the Service Commencement Date. Any additional charges shall become due within 14 days of the date of the Company's invoice.

- 9.3 Payment of the Charges shall be by direct debit or such other means of electronic funds transfer as the Company shall decide and shall be due 14 days after the date of the Company's invoice.
- 9.4 The Customer authorises the Company to alter the Customer's direct debit instructions according to the relevant Charges from time to time applicable to the Installation Services and/or Maintenance Services. On proper termination of the Contract the Customer shall be responsible for the cancellation of any direct debit instructions or other authorisations for periodic payment to the Company. Except on proper termination of the Contract the Customer acknowledges that it must inform the Company immediately if it proposes to cancel any direct debit instructions. Cancellation of any direct debit instruction shall entitle the Company to suspend and/or terminate the Contract without notice.
- 9.5 Time of payment is of the essence.
- 9.6 For the purposes of this Contract, payment is received when the Company receives it in cleared funds.
- 9.7 Payment by the Customer or on its behalf shall be made without any deduction or set off.
- 9.8 The Company reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 9.9 Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.
- 9.10 If the Customer fails to make any payment on the due date then Charges for all Installation Services and/or Maintenance Services provided or agreed to be provided to the Customer shall be immediately due and payable without demand and the Company may:-
- 9.10.1 cancel the Contract or suspend performance to the Customer in accordance with clause 4; and/or
- 9.10.2 appropriate any payment made by the Customer to such of the Installation Services and/or Maintenance Services (or the goods or services supplied under any other contract between the Customer and the Company) as the Company thinks fit.
- 9.11 The Company is entitled to set off sums owed by the Company to the Customer against sums owed by the Customer to the Company.

10. **RISK AND PROPERTY**

- 10.1 **The Equipment remains the property of the Company until:-**
- 10.1.1 **the full price has been received by the Company; and**
- 10.1.2 **all other sums which are or which become due from the Customer on any account with the Company have been received by the Company.**
- 10.2 If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.
- 10.3 The Equipment is at the risk of the Customer from the time of delivery.

- 10.4 Until ownership of the Equipment passes to the Customer, the Customer must:-
- 10.4.1 store it at its own cost at the Site separately from any other goods and in a manner which makes them readily identifiable as the equipment of the Company;
 - 10.4.2 not destroy, deface or obscure any identifying mark or packaging of the Purchased Equipment;
 - 10.4.3 maintain the Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks; and
 - 10.4.4 hold the proceeds of insurance referred to in clause 10.4.3 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 10.5 The Company may, so as to discharge any overdue payment from the Customer recover or resell the Equipment.
- 10.6 In order to verify the Customer's compliance with its obligations under clause 10.4 and to exercise its rights under clause 10.5, the Company shall be entitled by its employees or agents without notice to enter the Site or such other premises where the Equipment is located.
- 10.7 The Customer's right to possession of the Equipment terminates immediately if any of the events set out in clause 13 occurs.

11. **LIMITATION OF LIABILITY**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 11.1 The following sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of these Conditions, any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.
- 11.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-
- 11.2.1 any implied condition that the Company has or will have the right to provide the Equipment when the property is to pass; or
 - 11.2.2 if the Equipment is sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, any implied term relating to the conformity of the Equipment with their description or sample or as to their quality or fitness for a particular purpose.
- 11.3 Where the Equipment or Installation Services and/or Maintenance Services are provided under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- 11.4 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

11.5 Subject to clauses 11.2 and 11.4:-

11.5.1 the Company shall not be liable to the Customer for any loss of profit, loss of production, financial loss, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the Contract, its contemplated performance or lack of performance or any suspension of Installation Services and/or Maintenance Services in accordance with clause 4; and

11.5.2 subject to clause 11.5.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the Contract price and any additional Charges incurred by the Customer.

12. **INDEMNITY**

The Customer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company towards a third party arising out of or in connection with the Equipment or Installation Services and/or Maintenance Services provided by the Company or their operation or use and whether arising by reason of the negligence of the Company or otherwise.

13. **DURATION AND TERMINATION**

13.1 In relation to the Installation Services and/or Maintenance Services, the Contract shall come into effect on the Service Commencement Date.

13.2 The Contract shall continue in force unless either party terminates the Contract by giving the other party 90 days' written notice, or such shorter period as the Company may agree. Such notice period shall not be valid unless it expires on or after the end of the Minimum Period.

13.3 Notwithstanding clause 13.2, the Customer may terminate the Contract in accordance with clause 8.5.

13.4 Notwithstanding clause 13.2 the Company may terminate the Contract immediately on written notice if:-

13.4.1 in relation to the Maintenance Services, the Company reasonably considers that the Customer's telecommunications system is malfunctioning due to age or obsolescence. In such circumstances the Company will refund the Annual Maintenance Charge in such pro rate amount as it, in its absolute discretion, deems appropriate.

13.4.2 the results of any Survey are not, in the Company's opinion, satisfactory;

13.4.3 the Customer is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a liquidator, trustee in bankruptcy, receiver or administrator (or equivalent) is appointed over any of the Customer's assets or the Customer enters into any formal or informal composition or arrangement (or equivalent) with the creditors of the Customer or the Company reasonably believes that such events are reasonably likely to occur. For the purposes of this clause 13.4.3 the Customer shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;

- 13.4.4 the Customer makes a material mis-statement in the details the Customer has supplied to the Company to enable the Company to provide the Equipment, Installation Services and/or Maintenance Services;
 - 13.4.5 the Customer materially breaches (including without limitation failure to pay any Charges promptly) the Contract or any other agreement the Customer may have with the Company or a member of the Company's group;
 - 13.4.6 the Company suspects on reasonable grounds that the Customer may have committed or may be committing:-
 - (a) a breach of Law; and/or
 - (b) any fraud against the Company or any third party.
 - 13.4.7 the Customer fails to meet a reasonable standard of creditworthiness; or
 - 13.4.8 any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Installation Services and/or Maintenance Services.
- 13.5 If the Company requests the Customer to do so but the Customer fails to return to the Company (or as otherwise notified to the Customer by the Company) the Order Form duly signed by the Customer within 14 days of the Service Commencement Date (or any other date notified to the Customer by the Company) the Company shall be entitled (but not obliged) without notice to terminate the Contract or, without prejudice to its right so to terminate, to downgrade or suspend the Installation Services and/or Maintenance Services as it thinks fit.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 13.6 **On termination of the Maintenance Services Contract by reason of the Customer's breach of Contract or other default, the Customer shall be liable to pay to the Company 25% of the Charges that would otherwise have been payable by the Customer. Such sum to be calculated by taking the average monthly Charges incurred (or where such Charges have been reduced or waived, such Charges as would ordinarily have been payable), during the period from the Service Commencement Date to the date of termination multiplied by the number of months remaining. Such sums shall be paid by way of liquidated and ascertained damages by the Customer to the Company and such sums are accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.**
- 13.7 On termination or expiry of the Contract the Customer must allow the Company promptly to remove any Equipment that is not paid for in full. If the Customer delays prompt removal of the Equipment following termination or expiry of the Contract, the Company shall, until such removal is effected, be entitled to continue to charge the Customer and the Customer shall pay such Charges together with any additional costs and expenses caused to the Company by such delay.
- 13.8 The right to terminate the Contract shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination (including, without limitation, termination under clause 7.3.

14. **HEALTH AND SAFETY**

The Customer agrees to:-

- 14.1 pay due regard to all information supplied by the Company relating to the preparation of the Site, accessibility of the Site and use of the Equipment necessary to ensure the Equipment will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person;
- 14.2 indemnify the Company in respect of any and all claims arising from the Equipment being unsafe as a result of the Customer's activities;

15. **GENERAL**

- 15.1 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights by itself or through any other member of its group.
- 15.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether or not under the Contract.
- 15.3 If any provision of the Contract (including any provision of clause 10) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall (subject to termination at the discretion of the Company), continue in full force and effect.
- 15.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 15.5 Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.
- 15.6 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 15.7 Notices addressed to the Company shall be marked for the attention of the Company Secretary.
- 15.8 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 15.9 A notice is deemed to have been received:-
 - 15.9.1 if delivered personally, at the time of delivery;
 - 15.9.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
 - 15.9.3 if sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 15.10 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16. **ASSIGNMENT**

16.1 The Company may without consent assign, subcontract or otherwise transfer the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.

16.2 The Customer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

17. **ENGLISH LAW**

17.1 The Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.

17.2 Clause 17.1 is for the benefit of the Company only and as a result the Company shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.

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