

Certain capitalized terms have a specific meaning as set out in the list of Definitions in Part A below.

It is especially important that you read and understand certain clauses below, **which are set out in bold text**.

## Part A. Definitions and Rules of Interpretation

The following Definitions and Rules of Interpretation apply to all parts of these terms and conditions.

### 1. Definitions

**"Age Restricted Services"** means any Services for use only by customers aged 18 or over;

**"Agreement"** means this Managed Services Agreement between you and us for the supply of Services (as applicable) which comprises the Sales Order and/or Order Form (as applicable), any applicable Service Specific Terms, the General Terms, any Service Level Agreement, and any supplementary terms or guidance that we publish from time to time, and any variations that we make to them from time to time in accordance with clause 1.3 of the General Terms;

**"Approved"** means in relation to a Sales Order and/or Order Form, one which has been accepted and approved by us in accordance with the terms of this Agreement, and Approval shall be evidenced by our doing at least one of the following:

- (a) issuing written confirmation of a Sales Order;
- (b) countersigning and dating an Order Form;
- (c) executing a digital version of the Order Form/Confirmation of order letter;
- (d) commencing the supply of the Service in question,

and **"Approval"** and **"Approve"** shall have the corresponding meaning;

**"Artificial Inflation of Traffic"** means a situation where the flow of Calls to any particular revenue share service is as a result of any activity by or on behalf of the party operating that revenue share service disproportionate to the flow of Calls which would be expected from good faith commercial practice and usage of the network;

**"Business Day"** means any day other than a Saturday or a Sunday or a public holiday in England;

**"Call"** means a signal, message or communication which can be silent, visual or spoken, excluding text messages;

**"Charges"** means any charges or fees payable by you to us in respect of the Services or any part of them and any VAT or other tax payable thereon, which shall include the Periodic Fee, Variable Charges, Set Up Charges, Termination Fees or other charges or one off charges as set out in this Agreement and/or set out in the Sales Order and/or Order Form and varied from time to time in accordance with clause 4.8 of the General Terms;

**"Commencement Date"** means the date specified as such on the relevant Order Form or, if no date is specified or no Order Form is completed, the first date on which we commence the provision of the Services to you, or otherwise in accordance with clause 1.2 of the General Terms;

**"Connectivity Service"** means broadband, Ethernet and/or data services identified on an Order Form as being a Connectivity Service or otherwise as we supply to you from time to time;

**"Connectivity Service Specific Terms"** means the Service Specific Terms relating to the provision of the Connectivity Service as set out in Part D (as may be varied in accordance with clause 1.3 of the General Terms);

**"Credit Limit"** means the maximum permitted amount, determined by us, of credit applied to you in respect of billed or unbilled Charges (excluding VAT) as may be notified by us to you in writing from time to time in accordance with clause 6.1 of the General Terms;

**"Customer Data"** shall include, but not be limited to, data transmissions in relation to your use of the Services (including the originating and destination numbers and internet protocol addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of individuals that represent you, your employees or authorised users of the Services

(including "personal data" as defined in section 1 of the Data Protection Act 1998), and other data provided to or obtained by us, a Group Company and our or their respective agents in connection with the provision of the Services;

**"Customer Equipment"** means hardware, software, systems, cabling and facilities provided by you and used in conjunction with the Equipment that we supply to you in order to receive the Services;

**"Delayed Charges"** shall have the meaning given in clause 4.5 of the General Terms;

**"End User"** means any person who is an ultimate recipient or user of the Services (such as your directors, officers and employees and anyone else who makes use of the Services that we supply to you);

**"Equipment"** means the telecommunications or routing equipment provided by us in connection with the Services including the Line Rental Equipment, Mobile Equipment and all other items of hardware provided to you in connection with the Services;

**"Fixed Voice Service Specific Terms"** means the Service Specific Terms relating to the provision of the Fixed Voice Service as set out in Part B (as may be varied in accordance with clause 1.3 of the General Terms);

**"Fixed Voice Services"** means the rental (and where applicable the installation and/or conversion) of analogue and/or digital telecommunication exchange lines and/or the supply of PSTN (Public Switch Telephone Network) or LLU (Local Loop Unbundling) telephony services, or using any internet protocol telephony services. In some cases, the Fixed Voice Service will involve 'carrier pre-selection', whereby calls are not routed directly over the BT network, or least cost routing, in each case supplied by us pursuant to the Fixed Voice Service Specific Terms;

**"Force Majeure"** means any act of God, insurrection or civil disorder, war or military operations, failure, interruption rationing or shortage of energy supplies, imposition of sanctions or embargo, inclement weather, flood, drought, explosion, lightning, volcanic eruptions or fire or exceptionally severe weather, epidemic, nuclear, chemical or biological contamination, sonic boom or solar flare, lock-outs (whether or not by that party), national or local emergency, acts or omissions of government or other competent regulatory authority, telecommunications network operators, industrial disputes (in each case, whether or not relating to that party's workforce), highway authority or other government or regulatory authority, compliance with any statutory obligation, industrial disputes of any kind, the acts or omissions of network operators, inability or delay in obtaining supplies of a Service or equipment due to the act of a third party, delay or failure of that party's supplier(s), act of animals or any other cause beyond that party's reasonable control;

**"Fraud"** means any fraudulent or other unauthorised use (whether actual or attempted) of any telecommunication or IT services (including the Services), a Network, SIM Cards or Equipment, or the use or attempted use of any telecommunication or IT services (including the Services), any electronic communications network, SIM Cards or Equipment by corrupt, dishonest or illegal means, at any time and by any person, and includes any Artificial Inflation of Traffic;

**"General Conditions"** means the General Conditions of Entitlement published by the Office of Communications (Ofcom) in accordance with section 45 of the Communications Act 2003, as may be amended, modified or replaced from time to time;

**"General Terms"** means our general terms governing the supply of the Services as varied from time to time in accordance with clause 1.3 thereof, and which forms Part A of these terms and conditions, and which apply in respect of all sales or other provision of Services or Equipment by us to our customers;

**"Group"** in relation to any company, any subsidiary or holding company from time to time of Transparent Telecom Ltd and any subsidiary from time to time of a holding company of Transparent Telecom Ltd (where the terms "holding company" and "subsidiary" shall have the meanings given in section 1162 of the Companies Act 2006), and "Group Company" shall have a corresponding meaning;

**"GSM Gateway"** means any equipment containing a SIM Card which enables the routing of calls or sending of text messages from fixed apparatus to mobile equipment by establishing a mobile to mobile call or data connection;

**"Insolvent"** means when a person is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

**"Intellectual Property Rights"** means patents, registered designs, trademarks and service marks (whether registered or not), internet domain names, copyright (including all customer terms and conditions and other similar documentation and any software code including any source or object code), design rights, database rights and all similar property rights (whether or not registered) and all rights or forms of similar protection or having equivalent or similar effect including those subsisting (in any part of the world) in inventions, ideas, improvements, designs, drawings, performances, computer programs, software, semiconductor topographies, plant varieties, confidential information, business names, goodwill and the style of presentation of goods or services including any improvements or refinements to any of the foregoing and in application for protection of any of the above rights and all other intellectual property rights and similar and equivalent rights in the world which currently exist or are recognised in the future;

**"IP Network"** shall mean the points of presence, network hubs, and host computers owned, operated or used by us or a Group Company in connection with the provision of the Fixed Voice Services or the Connectivity Service (or, where applicable, owned, operated or used by you);

**"Land Line Network"** means any fixed line telecommunications network;

**"Liability"** means all awards, compensation, costs, expenses, losses, (including any direct, indirect or consequential losses, loss of profit, loss of reputation), liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, tribunal awards and other liabilities (including all interest, legal and other professional fees and expenses on an indemnity basis) whenever or howsoever arising or brought;

**"Line"** means a connection to the Land Line Network;

**"Line Rental Equipment"** shall mean the hardware, software, systems, cabling, and facilities provided by us at the Site (or any third party premises agreed by the parties) in order to make the Services available to you. Line Rental Equipment shall not include the Land Line Network or any hardware or software which is the subject of a separate supply contract between you and us (or any of our Group Companies);

**"Maintenance Service"** means the telephone system maintenance services supplied by us pursuant to the Telephony System and Maintenance Service Specific Terms and as described on the relevant Order Form;

**"Minimum Period"** means a period of 60 consecutive months from the Commencement Date or such other period as is agreed and stated in a Sales Order and/or Order Form;

**"Mobile Equipment"** means any phones, SIM Cards and related items (including USB modems and phone chargers packaged along with a phone) or other equipment provided by us to you under this Agreement for use in connection with the Mobile Telephony Service;

**"Mobile Telecommunications Network"** means a telecommunications network used for the provision of mobile telecommunications services;

**"Mobile Telephony Service"** means the mobile telecommunications service supplied by us pursuant to the Mobile Telephony Service Specific Terms (if any) and as described on the relevant Order Form;

**"Mobile Telephony Service Specific Terms"** means the Service Specific Terms relating to the provision of the Mobile Telephony

Service as set out in Part C (as may be varied in accordance with clause 1.3 of the General Terms);

**"Network"** shall mean the Land Line Network, the Mobile Telecommunications Network and/or the IP Network;

**"Network Operator"** means the operator of the Networks and from whom access to the relevant Network is procured by us for your benefit;

**"Network Termination Point"** means the point where the relevant customer's wiring or equipment is connected to the Land Line Network;

**"Order Form"** means a document setting out the Sales Order for the supply of the relevant Services to you, which shall be in such form as we use from time to time and/or as we may in our sole discretion Approve;

**"Periodic Fee"** means the fixed fee payable by you to us in consideration of our supply of the Services, to be paid on a periodic basis as specified in the relevant Order Form or otherwise confirmed in writing by us;

**"Price List"** means our list of prices and tariffs for the Services (as we may amend from time to time) and which is available upon request;

**"Sales Order"** means a request by you to receive the Services or a change or variation in respect of the same (but not a disconnection) which is submitted either (i) using the Order Form as made available to you by us, and/or (ii) such a request made orally and which is converted into an Order Form, Welcome Pack or Confirmation of order letter by us, which in either case shall constitute an offer by you for the provision of the Services subject to the terms of this Agreement;

**"Service Provider"** means a supplier to us of goods and/or services that form any part of the Services (whether or not those goods and/or services are supplied to you in exactly the same form as they are supplied to us or are integrated into a separate product that we have constituted);

**"Service Specific Terms"** means any terms and conditions (other than the general terms) which are identified as being specific to a particular part of the Services or any specific item of Equipment from time to time;

**"Services"** means the managed services that we provide pursuant to this Agreement, constituting the Fixed Voice Service, Mobile Telephony Service, Connectivity Service, Telephony System and Maintenance Service, and any additional service(s) that we supply to you from time to time (whether or not set out in the Sales Order and/or Order Form (as applicable), in each case including any Equipment which we supply as part of or ancillary to such Services;

**"Set Up Charge"** means any charge applicable for the set up or establishment of any particular part of the Services, as stated on the Order Form or, where the relevant Order Form does not identify such charge, the applicable charge as stated in the Price List from time to time;

**"SIM Card"** means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to you by us.

**"Site"** means the site at which the Services are supplied to you as identified on any relevant Sales Order and/or Verbal Agreement;

**"Software"** means any software (excluding end-user licensed software) supplied to you by us, the Service Provider, the Network Operator or any other supplier under the terms of or in respect of this Agreement, which shall be on the terms of a non-exclusive, non-transferable licence and which software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Services;

**"Subsequent Period"** means a period of 36 consecutive months commencing at the expiry of the Minimum Period and renewing at the expiry of each such 36 consecutive month period;

**"Telephony System and Maintenance Service Specific Terms"** means the Service Specific Terms relating to the provision of telephone systems and hardware and/or the Maintenance Service, (as may be varied in accordance with clause 1.3 of the General Terms);<sup>2</sup>

**"Termination Fee"** means the fee which we may charge to you in the circumstances described in clause 16.4 of the General Terms, which we will calculate and notify to you at the relevant time and which will not exceed the sum of:

**(a) the aggregate Periodic Fees payable for the unexpired portion of the then-current Minimum Period or Subsequent Period (as applicable);**

**(b) any subsidised installation charges, discount(s) or other contribution by us towards your historic, upfront or ongoing costs set out in any Sales Order (for example, historic leases entered into by you that we agree to settle or refinance as part of your transfer of services to us); and**

**(c) such other costs or expenses that we remain liable to pay to a Service Provider, Network Operator or any other third party in connection with the provision of the Services to you for the unexpired portion of the then-current Minimum Period or Subsequent Period (as applicable) notwithstanding your early termination, but only to the extent that such other costs or expenses are not already incorporated within parts (a) or (b) above;**

**"Variable Charges"** means any charge that varies in respect of each billing period and which is determined by reference to the nature and/or extent of your use of a particular part of the Services, including call charges;

**"we", "us" and "our"** refers to Transparent Telecom Ltd incorporated in England and Wales with registration number 11475369 and with its registered office at **Transparent Telecom Ltd, 4a**

**Castle Hill View, Rochester, Kent, ME1 1LA** trading as Transparent Telecom;  
"Website" means our website with the address [www.transparenttelecom.co.uk](http://www.transparenttelecom.co.uk). All of the terms and conditions applicable to the supply of Services can be viewed at <http://www.transparenttelecom.co.uk/the-legal-stuff> and the Price List can be viewed on request. We reserve the right to change our website address and/or the location of pricing and legal information from time to time; and  
"you" and "your" refers to you, the CLI, the property/premises and/or the business to which we supply the Services subject to the terms of this Agreement, whose details are stated in the Sales Order and/or Order Form or is otherwise the recipient of the supply of all or part of the Services from us.

## 2. Rules of Interpretation

2.1 In this Agreement, unless the context otherwise prescribes:

2.1.1 all headings are for convenience only and shall not affect its interpretation;

2.1.2 references to a clause shall, unless expressly stated otherwise, be to a clause within the General Terms in Part B of these terms and conditions, and references to a paragraph shall, unless expressly stated otherwise, be to a paragraph within the relevant Service Specific Terms in of these terms and conditions;

2.1.3 all references to this Agreement shall include any permitted variation, amendment or supplement to it from time to time;

2.1.4 any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under any such amendment, modification, consolidation or re-enactment);

2.1.5 references to the plural shall include the singular and vice versa and reference to one gender includes reference to all genders;

2.1.6 any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated; and

2.1.7 any words following the terms "including", "include", "in particular", "for example", "such as" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or following those terms.

2.2 In the event of any conflict between the any provision(s) of the following, the order of precedence shall be (in descending order, the first being the highest precedence):

2.2.1 any Sales Order and/or Order Form; then

2.2.2 any applicable Service Specific Terms; then

2.2.3 any applicable Service Level Agreement; then

2.2.4 the General Terms.

## Part B. General Terms About this Managed Services Agreement

### 1. How this Agreement is formed

**1.1** Transparent Telecom Ltd supplies communications and IT services (referred to herein as the "Services") to its customers subject to the terms of this Agreement. The Agreement comprises General Terms applicable to all customers (this Part A), Service Specific Terms applicable only to particular parts of the Services (Parts B to E, which follow), the Sales Order and/or Order Form, any specific Service Level Agreement that we may agree with you from time to time, and any supplementary terms, guidance or rules that we publish relating to your use of the Services.

**1.2 A Sales Order is your offer to purchase the Services from us in accordance with this Agreement and our Approval of a Sales Order is our acceptance of your offer.**

**When a Sales Order is entered into, you agree to these terms and conditions. You can view them at any time by visiting the Terms and Conditions page of our Website, [www.transparenttelecom.co.uk/the-legal-stuff](http://www.transparenttelecom.co.uk/the-legal-stuff). Usually your agreement will be given in the form of Verbal Consent. However, if we supply you with the Services or any part of them and you proceed to use them, even if a Sales Order is not completed or an Order Form not signed, you do so on the basis of, and are deemed to have agreed to these terms and conditions (in the form published on the Website at the time of our supply).**

**1.2.2 If you wish to cancel the agreement during your cooling off period, a cancellation reference number must be requested.**

**1.3 From time to time Transparent Telecom Ltd, 4a Castle Hill View, Rochester, Kent, ME1 1LA may publish new versions of or make changes to the Agreement. If you wish to view the updated agreement please contact our customer service team on 0330 056 3377, or contact us by writing to Transparent Telecom Ltd, 4a Castle Hill View, Rochester, Kent, ME1 1LA otherwise you will be deemed to have accepted the updated terms.**

### 2. How we provide the Services

**2.1** We provide the Services to both residential and business customers.

**2.2** We will use reasonable endeavours to provide the Services;

2.2.1 subject to technical and commercial feasibility;

2.2.2 by any dates agreed with you, but you agree that such dates are estimates and time is not of the essence in our performance of the Services;

2.2.3 with the reasonable care and skill that may be expected from a competent managed services provider; and

2.2.4 in all cases in accordance with this Agreement,

However, you acknowledge and agree that it is technically impracticable to provide the Services entirely fault free or on an uninterrupted basis, and neither we nor any Service Provider or Network Operator undertakes to do so. Subject to clauses 13.3 and 21 of these General Terms, we do not accept any liability to you in respect of any failure to provide the Services completely error-free or uninterrupted.

### 3. Certain limitations and qualifications in relation to our provision of the Services

**3.1** We cannot guarantee the continuing availability of any particular item of Equipment and you acknowledge that we may be dependent upon third parties for its provision. Accordingly, we may add to, substitute and/or discontinue any item of Equipment and/or to change the specification of the Equipment at anytime.

**3.2** The following non-exhaustive list of technical limitations and restrictions may affect certain parts of the Services and we will not be liable to you or to any End User for any failure to notify you specifically of the same, nor for our inability to supply the Services (or any part of them) as a result of the occurrence of any such circumstance:

3.2.1 technical limitations within a Network, which may affect a part of the Services or the interoperability between certain parts of the Services, and which may not become apparent until after installation (whether immediately or sometime later). In such event, we may have to withdraw a certain part of the Services. If this happens, we will provide as much notice of withdrawal to you as is reasonably practicable;

3.2.2 there are certain services or products that may be unavailable and/or incompatible with a particular Network;

3.2.3 the performance of some equipment at the Site, including proprietary systems that belong to you or to third parties, may be adversely affected by the Services or a part of them; and <sup>3</sup>

3.2.4 there may be individual technical or geographical limitations that inhibit or prevent the installation and provision of the Services or part of them in your area.

3.3 You agree to co-operate fully with us and/or any Service Provider or Network Operator (and our or their employees, agents and/or sub-contractors) in respect of the installation of and ongoing supply of the Services or part of them (including any installation and/or conversion services required). The installation of the Services is dependent on your providing us with the information and co-operation that we reasonably request from you from time to time.

3.4 We may make alterations to any aspect of the Services (or their description) including conversions, shifts, reconfigurations and renumbers, withdrawal or introduction of features, which may include changes in the technical specification of the Services or particular components of them. These may include service or system upgrades and/or major changes to the telecommunications systems themselves. Such alterations may result in temporary disruption to the relevant part of the Services. Where such changes are within our control, we will use reasonable endeavours to minimise any disruption to you and, where practicable, will give you prior notice of such alterations.

3.5 From time to time it may be necessary for a third party such as a Service Provider or Network Operator to contact you in connection with our obligations under this Agreement, and by using the Services you consent to such contact.

## Paying for the Services

### 4. Charges and payment

**4.1** We will charge you for your use of the Services and you agree to pay the Charges in accordance with this Agreement. The Charges will include a fixed Periodic Fee in an amount and billing frequency that will be stated on your Order Form, or if not stated thereon then as we will otherwise confirm to you. As well as the Periodic Fee we will also charge you Variable Charges which will vary depending on the nature and use of the Services provided. If no Periodic Fee or Variable Charges are specifically stated on your Order Form or otherwise in writing by us, then they will be charged at a level not higher than the prevailing rate published in the Price List from time to time.

**4.2** You agree to pay us all Charges in accordance with this Agreement on the basis of usage data that we provide. You acknowledge that we may also charge you certain one-off charges, such as when you request a variation to the Services and we are liable to pay cancellation costs charged by third party suppliers, and/or a Termination Fee if you tell us you want to terminate this Agreement before the expiry of the Minimum Term or any Subsequent Term. You agree to pay such one-off charges on demand.

**4.3** Any charges paid in advance (upfront) are non-refundable. In the event the agreement is cancelled and an Early Termination Charge is applicable, this payment will not be taken into consideration.

4.3 In the event that any Equipment and/or Software is damaged, destroyed, lost or stolen then you agree to pay the applicable replacement or repair charges as set out from time to time in the Price List.

4.4 In the event that any invoice that we send to you contains an error (howsoever arising) such that you are invoiced less than you owe, then we may send you a further invoice for the difference between the amount so invoiced and the amount that ought to have been invoiced had the error not been made, and you agree to pay any such invoice on demand.

4.5 In the event that we omit or delay the invoicing of any Charges ("**Delayed Charges**") we may invoice you at a later date (and you will continue to be liable to pay us) for them.

**4.6** You agree to pay the Charges and any other sums due to us within 14 days of the date of our invoice (or by such other date as is stated on an invoice or expressly agreed in writing with us). Unless any other method of payment is agreed with us in writing, the Charges shall be paid by direct debit and you agree to provide us on demand with all information necessary from time to time to allow payments to be made by such method.

4.7 If you do not pay to us any sum due in accordance with this Agreement by the due date for payment, we may charge and you agree to pay interest, a further fixed sum and reasonable costs,

in each case as provided for under the Late Payment of Commercial Debts (Interest) Act 1998.

**4.8** We may at any time increase the Charges by publishing the relevant changes to the Price List. Charges that affect you:

**4.8.1** if the cost to us of supplying the Services increases for any reason, by the amount of such increase;

**4.8.2** pursuant to a direction from any legal or regulatory body or competent authority with jurisdiction over us, by the amount set out or otherwise required by such direction;

**4.8.3** by a percentage equal to the percentage increase in either the Retail Price Index or the Consumer Price Index (whichever is the greater) for the relevant year or, if greater, by a percentage equal to the percentage increase in the Retail Price Index or the Consumer Price Index since the date of the last increase in Charges (whichever is the greater); and/or

**4.8.4** in addition and without prejudice to the foregoing sub-clauses, we may increase the Charges for the Services once in every 12-month period by either: (i) up to 10 per cent; or (ii) by such amount that the aggregate of all the Charges set out in the Price List increases by no more than 10 per cent.

4.9 All invoices will be sent via paper, unless you notify us in writing that you require e-billing. For paper billing charges please see price our price list.

4.10 We may charge you, and you agree to pay, additional administrative fees as detailed in the Price List where:

4.10.1 a direct debit is unpaid;

4.10.2 you make payment by a method other than direct debit;

4.10.3 you receive paper invoices from us; and/or

4.10.4 we write to you chasing payment of an overdue invoice.

**4.11** If you wish to query or dispute any Charges, you will need to raise them with us within 60 days of the date of the relevant invoice and in accordance with our Code of Practice on Complaint Handling and Dispute Resolution, which is published on the Website.

4.12 You agree to pay to us all amounts properly due and payable under this Agreement in full and without making any deduction, withholding, counterclaim or set off except as required by law. Without limiting any other rights or remedy, we may set off any amount that you owe to it under this Agreement or any other agreement against any amount that we owe to you.

### 5. Fraudulent use of the Services

**5.1** You are responsible for taking reasonable steps to mitigate the risk of the Services being used fraudulently, including:

5.1.1 ensuring the secure implementation and management of your systems;

5.1.2 maintaining security and confidentiality of authentication details that you require to use the Services or any part of them, and disabling access to any accounts that are compromised;

5.1.3 mitigating exposure to any suspected or known security breach by resetting passwords, implementing adequate control and security (to a level considered to be industry standard) over the Services designed to prevent viruses, logic bombs or worms, "trojan horses" and any other types of disruptive, destructive or nuisance programs and/or any calls generated by rogue dialers or hackers; and

5.1.4 obtaining at your own expense professional security advice with regard to secure use of the Services.

5.2 You must notify us immediately on becoming aware of any Fraud affecting the Services supplied to you. On being notified by you that any such event has occurred, we will attempt to suspend the relevant part of the Services as soon as possible, but you acknowledge that we are reliant on third parties in relation to the supply of certain Services and therefore there

might be a delay between the notification of the Fraud to us and the suspension taking effect, which we cannot control.

**5.3 You are solely responsible to set up and maintain security independently of our supply of the Services to you and we do not accept any liability whatsoever for any costs incurred as a result of a breach of security. You will be liable for all Charges incurred in connection with any Fraud, Artificial Inflation of Traffic or other improper use of the Services until the affected Services are suspended.**

## **6. How we mitigate credit risk**

**6.1** We will allocate to you a Credit Limit, which we may change at our discretion from time to time without prior notice. If you accrue Charges that exceed the Credit Limit, then we may:

6.1.1 demand immediate payment of the amount of Charges that exceed the Credit Limit; and/or

6.1.2 suspend the Services (including any installation of them) until you have paid to us such excess sum.

You will remain liable to pay all the Charges incurred under this Agreement even if they are incurred during or arise out of a period of suspension.

6.2 We may undertake certain credit checks against you and you acknowledge and consent to our passing information about you to credit reference agencies and/or any third party who may be supporting us in performing searches with credit reference agencies relating to your creditworthiness and/or that of your owners, directors, officers, employees and assigns (and you agree to procure<sup>4</sup> that your owners, directors, officers, employees and assigns consent to the same). You agree to supply or procure the supply of all information requested by us for the purpose of a credit search and consent to our disclosing such information to a Court or law enforcement, legal or regulatory body if required by law or in connection with enforcing our rights under this Agreement.

6.3 In certain circumstances, we may require you to provide us with a cash deposit, to be used as security against any Charges you have incurred or may incur in your use of the Services. This deposit will be returned to you when we are satisfied that payment has been made to us of all outstanding Charges, or upon termination of this Agreement if no Charges remain outstanding at termination (in which case the deposit shall be applied against such Charges before any balance is returned to you), whichever circumstance is the later. We will not pay you any interest on any deposit that we hold. Examples of the circumstances where we may require a deposit are where:

6.3.1 a periodic credit check against you reveals scoring that we determine is in our sole opinion unacceptable;

6.3.2 a Court judgment is issued against you in relation to an unpaid debt;

6.3.3 you incur Charges or other costs in your use of the Services that we reasonably consider to be abnormal;

6.3.4 you do not pay any Charges incurred under this Agreement by the due date for payment; and/or

6.3.5 we suspend all or any of the Services pursuant to clause 12.

## **How you use the Services**

### **7. Your undertakings to us**

**7.1** You are responsible for the safe use of the Services. Without prejudice to the generality of the foregoing, you undertake to:

7.1.1 grant to us and any Service Provider or other third party who requires access (prior to installation or delivery if necessary) rights of access to the Site (or third party premises if necessary), data and other facilities (including obtaining any necessary licenses, waivers or consents, such as landlord, wayleave or access consents) as we or such third party reasonably require to enable us to perform our obligations or exercise our rights under this Agreement, including to reclaim any Equipment post-termination (and where necessary you agree to procure all

necessary consents and permissions from third parties to allow the same);

7.1.2 advise us in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Site, and restore at your own expense the condition of the Site (or third-party premises) after installation or conversion work is completed (including any redecoration work that is required);

7.1.3 prepare the Site (or third party premises) at your own cost in accordance with our reasonable instructions so that the Services can be provided and/or the Equipment can be installed and in order to ensure the health and safety of our (or a Service Provider's) employees, agents or sub-contractors whilst at the Site (or third party premises), to configure any pre-existing equipment or infrastructure, and to provide a suitable and safe working environment for such persons acting on our behalf at the Site or third party premises;

7.1.4 make available a suitable place and conditions and connection points required for the provision of the Services supplied in accordance with our or a Service Provider's reasonable instructions;

7.1.5 use the Services at all times in accordance with all applicable law, licenses or regulations and such conditions, codes or procedures (including any acceptable use policies that we may publish from time to time) as shall apply to your use of the Services (and you acknowledge that you are responsible for informing yourself of the same), including those that we or a Network Operator may notify you of from time to time or publish on the Website;

7.1.6 ensure that any Customer Equipment or other telecommunications apparatus that you use in conjunction with the Services meets all legal and regulatory requirements, is approved for use with the Services and conforms to any specific requirements (including any operating system/housing or infrastructure specifications) that we notify to you;

7.1.7 provide to us, a Service Provider and/or a Network Operator any information that we or they require in connection with any action or correspondence that we or they are engaged in with a regulator or other competent authority, or which is required in pursuance of their respective obligations as telecommunications service providers or network operators;

7.1.8 report to us without delay any faults affecting the Services as and when they occur, and to pay an Abortive Visit Fee (as specified in the Price List) if we attend the Site to attend to any fault but it is reasonably determined to be attributable to the damage, theft or removal of equipment occurring on the Site prior to our visit; and

7.1.9 at all times use the Services in a manner that is consistent with a reasonable customer's good faith use of them.

7.2 You agree that you will not (and will procure that none of your directors, officers, employees, sub-contractors, delegates or assigns and no End Users will):

7.2.1 use the Services in such a way that communicates, delivers, knowingly receives, uploads, downloads, uses or re-uses any material or information that is intended to be a hoax call to any emergency service, that is defamatory, offensive, abusive, indecent, obscene or menacing, which sends unsolicited advertising or promotional material, which does or is intended to cause annoyance, inconvenience or worry to any person, which in our reasonable opinion brings our name or business into disrepute or which in any way causes damage or disruption to the Network, the Network Operator or the Services or any other services or systems operated by us or supplied by us to a third party;

7.2.2 use the Services in a manner that constitutes a violation or infringement of the rights of any other person or is prejudicial to the interests of our business, our customers' use of the Services or the business of a Service Provider or Network Operator, or otherwise in a manner that is likely to have an adverse impact on other users' service performance or use of the Network; or

7.2.3 use the Services for any purpose other than that for which it was designed or intended or specified in any materials or documentation that we provide to you.

7.3 If you do not take delivery or allow installation of the Services on any agreed installation date or delivery date, then we may arrange storage of any Equipment at your risk and cost and may also charge a Cancellation Fee (as specified in the Price List) together with any other reasonable costs that we incur as a result of such cancellation.

7.4 If any act or omission on your part causes you to breach the provisions of this clause 7 then we will not be responsible for any delays, increased costs or other consequences arising from such breach, and you agree to indemnify us and hold us harmless against any costs, claims, expenses or other liabilities that we incur as a result of such failure.

7.5 By continuing to use the Services, you represent to us that:

7.5.1 you are procuring the Services solely for you and your directors', officers' and employees' own use and that you will not resell or otherwise act as any form of distributor or agent of another party in respect of your use of the Services;

7.5.2 the person who entering into the agreement is authorised to do so on behalf of you, the company (not limited by position within the company) and the CLI, is otherwise duly authorised to execute the Order Form;

7.5.3 all of your details that were provided in respect of the Sales Order by the person acting on your behalf are accurate and up to date, and you will notify us immediately if any such details change during the term of this Agreement.

## 8. Equipment used in connection with the Services

8.1 Subject to any Order Form or any Service Specific Terms, all Equipment supplied to you as part of the Fixed Voice Service remains our property or, where indicated, that of the relevant Service Provider at all times unless otherwise expressly agreed.

8.2 You will not add to, modify, carry out any maintenance on or in any way interfere with Equipment, nor allow anyone else to do so (other than someone authorised by us).

8.3 You are solely responsible for the safekeeping of all Equipment supplied to you and shall be liable to us for any loss of or damage to it (except where such loss or damage is due to fair wear and tear or is caused by us or anyone acting on our behalf) and you will remain liable for all Charges accrued during any period of loss, theft, damage or other inability to use the Equipment.

8.4 You will ensure that any Customer Equipment connected to or used in conjunction with Equipment will bear the European consumer equipment standards "CE mark". You will ensure that all Customer Equipment is technically compatible with the Fixed Voice Service (including any Equipment) and used in compliance with all relevant instructions and safety and security procedures.

# Provisions relating to confidential information, personal data and intellectual property

## 9. Confidentiality

9.1 Both you and we undertake to the other to keep confidential the terms of this Agreement and all information (written or oral) concerning the business and affairs of the other that are obtained or <sup>5</sup>received as a result of the discussions leading up to the entering into this Agreement and during its term, save that which is:

9.1.1 in the public domain;

9.1.2 already known to the receiving party and the receiving party has written evidence of its prior knowledge;

9.1.3 lawfully received from a third party and/or ordered to be disclosed by any Court or other tribunal or regulatory authority of competent jurisdiction provided that the party making such disclosure shall (where possible) notify the party to whom the confidential information belongs in advance of such disclosure

and take reasonable steps to minimise the impact and extent of such disclosure; or

9.1.4 (in the case of confidential information belonging to you and disclosed to us) which we determine to be necessary to disclose to our employees, contractors, agents, Service Providers, Network Operators or our other Group Companies as we determine to be necessary for the provision of the Services or enforcing our rights under this Agreement.

## 10. Data protection

10.1 We, our Group Companies and our or their respective agents may use, process and/or transfer Customer Data:

10.1.1 where necessary in connection with the provision of the Services;

10.1.2 to incorporate Customer Data into databases controlled by us or our Group Companies for the purpose of administration, provisioning, billing and reconciliation, verification of your identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; or

10.1.3 to communicate to you regarding products, offers, discounts and services or associated services that we and/or our Group Companies may offer from time to time.

10.2 We and you will each ensure that we comply with all applicable data protection laws and regulations in the supply and use of the Services, including the Data Protection Act 1998. In particular but without limiting the generality of the foregoing words, all Customer Data that constitutes "personal data" as defined in the Data Protection Act 1998 will be held and processed by us in accordance with such Act and we will ensure that appropriate technical and organisational measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of such personal data.

10.3 You have the right to withdraw consent for our use, processing or transfer of Customer Data as set out in this clause 10, unless our use of such data is strictly required to:

10.3.1 provide, manage, account and bill for the Services;

10.3.2 carry out fraud detection; or

10.3.3 comply with any statutory obligation, regulatory requirement or Court or other public authority order or to protect life and limb by providing such information to the emergency services.

If you wish to withdraw consent, please tell us by writing to us at: Data Protection Officer, Transparent Telecom Ltd, 4a Castle Hill View, Rochester, Kent, ME1 1LA or emailing us at [support@transparenttelecom.co.uk](mailto:support@transparenttelecom.co.uk) In addition, under the Data Protection Act 1998 you have the right to request a copy of any personal information that we hold about you by writing to us at: Data Protection Officer, Transparent Telecom Ltd, 4a Castle Hill View, Rochester, Kent, ME1 1LA or emailing us at [support@transparenttelecom.co.uk](mailto:support@transparenttelecom.co.uk) There may be a charge for this service.

10.4 To the extent that either you and/or we act as a data controller (within the meaning of the Data Protection Act 1998), we each warrant, undertake and agree that we have obtained and will obtain all legally required consents and permissions from relevant parties including data subjects (and including any End Users where necessary) for the use, processing and transfer of Customer Data as set out in this clause 10.

10.5 We may monitor and record calls received by or made by you to us for customer service or marketing purposes. We may also contact you during the provision of any Services for billing, administration, development and support and maintenance purposes and by using the Services you are deemed to consent to such contact.

10.6 Customer Data may be processed for us and on our behalf by other Group Companies or other third parties. Where any such third party is based outside of the European Economic Area, we shall ensure by way of contractual agreement between us and such third party an adequate level of protection in respect of any

Customer Data that constitutes "personal data" as defined in the Data Protection Act 1998.

## 11. Intellectual property

**11.1** You acknowledge that all Intellectual Property Rights in all data, reports, drawings, specifications, designs, plans, programs, course materials, marketing collateral, advertising, descriptive matter or other material produced, provided, made available or acquired by us in the course of the performance of the Services shall vest in us and remain our property or that of our licensors, suppliers or sub-contractors, unless expressly agreed otherwise by us in advance and in writing. No copies may be made of such material unless expressly agreed otherwise by us in advance and in writing.

**11.2** We warrant to you that the provision of the Services and use by you of any Software in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party.

**11.3** We will indemnify you from all liabilities (including reasonable legal costs) incurred by you as a result of any finding in favour of a third party that alleges that the provision of the Services or any portion thereof infringes their Intellectual Property Rights, provided that you:

11.3.1 give us prompt written notice of such claim;

11.3.2 give us reasonable assistance and sole authority to conduct and/or settle all negotiations and litigation and defend and/or settle such claims. For the avoidance of doubt, the costs incurred or recovered in such negotiations and litigation shall be at our expense; and

11.3.3 have no dealings with such third party in relation to its claim and make no admissions in relation to such a claim without our prior written consent.

**11.4** If any infringement claim is made of the type referred to in clause 11.3, or in our opinion is likely to be made, we shall have the right, at our option to either:

11.4.1 obtain for you the right to continue using the item in question or to receive the Services;

11.4.2 replace or modify the item in question or the Service so it ceases to be infringing; or

11.4.3 as a last resort, grant to you a credit for that portion of the Charges attributable to the item or Service at issue in such claim, as depreciated, and accept such item's return or termination of the Service affected.

11.5 We shall not have any obligation to indemnify you if the alleged infringement is based upon:

11.5.1 use of a Service, other than in accordance with the terms of the Agreement and any other instruction we may give concerning its use; or

11.5.2 use of the Service in an unauthorised manner for which the Service is not designed.

11.6 Neither we nor any third-party licensors shall have any liability to you in respect of any infringement, alleged infringement, violation or misappropriation of any Intellectual Property Rights except as expressly provided in this clause 11.

11.7 You agree to indemnify us against any action, claim, loss, damage, proceedings and/or expenses (including legal costs) suffered or incurred by us or any of our Group Companies arising from any act in the course of your use of the Services that is directly or indirectly related to infringement of our or any third party's Intellectual Property Rights.

## When we may suspend the Services

### 12. Suspension of Services

**12.1 Without prejudice to any other right that we may have to suspend and/or terminate the Services, we may suspend the Services (in whole or part) until further notice**

**and without liability to you, with immediate effect in the following circumstances:**

**12.1.1 on the occurrence of any of the events listed in clause 16 (other than clauses 16.1.1 and 16.1.3, which circumstances are separately described in clauses 12.1.4 and 12.1.5 below, respectively);**

**12.1.2 where we are obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other administrative or competent authority or for your own security;**

**12.1.3 where we, a Service Provider or a Network Operator needs to carry out work to upgrade or maintain anything relating to the Services, including the Network, the Equipment, and the telecommunications and information technology system which we, the Service Provider and/or the Network Operator operate or subcontract the operation of;**<sup>6</sup>

**12.1.4 if you do not pay any sum due and owing to us or we have reasonable grounds to consider that you will not or are unable to make any payment which is due or is to fall due to us;**

**12.1.5 where you are in breach of any provision of this Agreement;**

**12.1.6 we become aware of or suspect any unusual or excessive use of the Services and/or any Fraud; and/or**

**12.1.7 where we are entitled to suspend the provision of any other service under the terms of any other agreement that we have entered into with you.**

**12.2 During any period of suspension referred to above, you will remain liable for all Charges payable in accordance with this Agreement.**

**12.3 You will reimburse to us all reasonable costs and expenses incurred in connection with a suspension pursuant to clause 12.1 and/or the recommencement of the provision of the Services, in the form of a Suspension Administration Fee as specified in the Price List.**

**12.4 If we exercise our right to suspend the Services or part of them pursuant to clauses 12.1.2 or 12.1.3 then we will always seek to give prior notice of such suspension to you whenever lawful and where we consider it to be practicable and appropriate to do so.**

**12.5 Subject to the provisions of clause 13, we will not be liable for any loss, damage or inconvenience suffered by you as a result of any suspension made pursuant to this clause 12, except to the extent that such suspension is solely and directly attributable to our gross negligence.**

**12.6 We will exercise our right to suspend the Services, if an active Direct Debit is not live on your account.**

## The extent of our liability to you

### 13. Limitation of liability

**13.1 Except as set out in clause 13.3, we will not be liable to you at all in respect of any:**

**13.1.1 breach by you of this Agreement (or losses you suffer as a result of using the Services in breach of this Agreement);**

**13.1.2 loss of actual or anticipated profit, savings, business, revenue or commercial loss;**

**13.1.3 loss of time or opportunity;**

**13.1.4 business interruption or wasted expenditure;**

**13.1.5 loss, disclosure or corruption of data;**

**13.1.6 loss or damage caused by viruses or unauthorised use of, or attempts to access, the Services or any of your devices;**

**13.1.7 lack of availability of IT and/or communications systems not provided by us;**

**13.1.8 any failure of safety, security or other alarm systems due to incompatibility with the Services, or any other reason which is not due to our fault or neglect;**

**13.1.9 damage to your reputation, and/or any loss that we could not reasonably have foreseen and any other indirect or consequential loss or damage whatsoever, save that nothing in this clause 13.1 shall operate to exclude the losses of the type described in clauses 13.2.1 or 13.2.2. 13.2 Notwithstanding any other provision of this Agreement but subject always to clause 13.3, our maximum aggregate liability to you under this Agreement in any 12-month period, in respect of all and any claims (whether one or more such claims) for direct or indirect loss or damage howsoever arising, including**

**13.2.1 direct loss of or physical damage to any physical property arising from our negligence; and/or**

**13.2.2 direct losses reasonably incurred as a result of having the Services supplied to a similar standard by an alternative supplier, shall in no circumstances whatsoever exceed the amount that is the lesser of (i) the aggregate amount of Charges paid or payable by you to us in the preceding 12 month period (or, during the first year of this Agreement, the Charges that would become payable over such first full year), and (ii) £5,000.**

**13.3 Nothing in this Agreement (including this clause 13) shall exclude or limit the liability:**

**13.3.1 of either party for fraud, death or personal injury resulting from the negligence of the other party or its employees acting in the course of their employment;**

**13.3.2 of either party for any proven fraudulent misrepresentation;**

**13.3.3 of you under the indemnities given by you to us under this Agreement;**

**13.3.4 of you to pay the Charges due under this Agreement; or**

**13.3.5 for anything else for which you or we cannot at law limit or exclude liability.**

**13.4 The express terms of this 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.**

**13.5 We shall not be liable for the acts, omissions or failures of:**

**13.5.1 Service Providers or other providers of telecommunication services to us in relation to our provision of the Services; or**

**13.5.2 you or anyone acting on your behalf.**

**13.6 Subject to clause 13.3, you will indemnify us against any and all losses, damages, costs, claims, expenses and/or other liabilities which we incur directly or indirectly as a result of any breach, act or omission in relation to this Agreement howsoever arising and/or as a result of any action brought by you against a Service Provider.**

## How any disputes will be dealt with

### 14. Dispute Resolution

**14.1** We will use all reasonable endeavours to attempt to resolve any dispute that arises in accordance with our Code of Practice on

Complaint Handling and Dispute Resolution, which is published on the Website.

**14.2** If the dispute cannot be resolved by the parties within eight weeks of your raising the dispute with us, then you may refer the matter to:

14.2.1 Communications & Internet Services Adjudication Scheme (CISAS) via the website (<https://www.cedr.com/cisas/>) or by telephone on 020 7520 3814; or

14.2.2 OFCOM, the communications regulator via the website (<https://www.ofcom.org.uk>) or by telephone on 020 7981 3040 or 0300 123 3333.

Any dispute must be submitted in writing to our Head Office: Transparent Telecom Ltd, 4a Castle Hill View, Rochester, Kent, ME1 1LA or emailing us at [support@transparenttelecom.co.uk](mailto:support@transparenttelecom.co.uk)

**14.3** If the procedure set out in clause 14 is not followed as stated, charges incurred by Transparent Telecom Ltd from 'third party' dispute resolution, may be forwarded to you.

14.3.1 Nothing in this clause 14 shall prevent you or us from exercising any rights or remedies that may be available in respect of any breach of the provisions of this Agreement.

## The duration and termination of this Agreement

### 15. Commencement and duration

**15.1** This Agreement commences on the Commencement Date and, subject to any provisions for earlier termination contained in clause 16, shall continue for the Minimum Period and thereafter automatically continue for Subsequent Periods unless:

**15.1.1** you give to us, not less than 90 days before the end of a Minimum Period or Subsequent Period (as the case may be), written notice of your intention to terminate this Agreement at the end of that Minimum Period or Subsequent Period, in which case this Agreement will terminate at the end of that Minimum Period of Subsequent Period (as the case may be); or

**15.1.2** we give to you (at any time) one month's written notice to terminate this Agreement, whereupon this Agreement shall terminate one month after we give you such notice.

**15.2** Where, during the term of the Agreement, you request a change or addition to the Services, we extend the remaining unexpired fixed term of this Agreement such that it is equal to the Minimum Period or a Subsequent Period (whichever period you are in at the time of requesting such change or addition).

**15.3** Where a Minimum Period or Subsequent Period expires and no Subsequent Period (or further Subsequent Period, as the case may be) commences pursuant to clause 15.1.1, but you continue to use the Services after such expiry (for any reason whatsoever), then you will continue to be bound by the terms of this Agreement in respect of your continued use of the Services (including the obligation to pay all Charges) until we terminate the Services (at any time at our discretion).

### 16. Termination

**16.1** Without prejudice to any other rights or remedies that we may have, we may terminate this Agreement with immediate effect (and, unless we determine that it is unlawful, inappropriate or impracticable, on giving written notice to you) if:

**16.1.1** you fail to pay all or any Charges by the due date and fail to remedy such breach within two Business Days of a written notice from us requesting such late payment;

**16.1.2** any agreement between us and one of our suppliers (including any Service Provider or Network Operator) is



suspended or terminated or expires without being renewed, or where the supply of Services under such agreement is suspended or terminated or ceases, and/or where such provider is not permitted by law to supply the Services which affects the supply of or the cost of supplying the Services;

**16.1.3 you are in breach of any obligation in this Agreement and, in the case of any breach capable of remedy, fails to remedy the breach within five Business Days of service of written request by us to do so;**

**16.1.4 you repeatedly breach any term of this Agreement in such a manner as to reasonably justify the opinion that your conduct is inconsistent with your having the intention or ability to give effect to this Agreement and use the Services in good faith, and/or the effect of such persistent breaches is to amount to a material breach;**

**16.1.5 we become aware or reasonably suspect that Fraud, Artificial Inflation of Traffic or any other improper use of the Services has taken or is taking place;**

**16.1.6 we have reasonable grounds to consider that you are or have been involved or connected with the commission of any criminal offence or other civil wrongdoing involving dishonest conduct (whether or not proceedings for the same are brought or, if brought, result in a conviction) or have otherwise behaved in a manner that in our opinion does or could adversely affect our goodwill, brand or reputation or that of any of our Companies;**

**16.1.7 we cease to be authorised to provide the Services or are otherwise prohibited from providing the Services by any competent authority or by some other regulation or law from supplying the Services, or otherwise are no longer able to provide the Services as a result of factors beyond our reasonable control;**

**16.1.8 you are or will imminently become Insolvent;**

**16.1.9 your direct debit is cancelled;**

**16.1.10 you fail to provide a deposit within ten Business Days of a request to do so made pursuant to clause 6.3; and/or**

**16.1.11 we have suspended one or more Services pursuant to clause 12 (other than 12.1.3) and such suspension has continued for at least five days.**

**16.2 Either of us may terminate this Agreement by written notice to the other and with immediate effect if:**

**16.2.1 we are in default of a material obligation under this Agreement and, in the case of any breach capable of remedy, fails to remedy the breach within 28 days (or such longer period as may be agreed between the parties) from receipt of written notice to do so from you.**

**16.3 For the avoidance of doubt, cancellation of a direct debit shall not of itself constitute notice to terminate this Agreement.**

## **17. Consequences of termination**

**17.1** Upon the expiry or termination of this Agreement we will cease to supply the Services and you agree to:

**17.1.1** immediately pay to us all sums invoiced by us that remain outstanding plus any applicable interest and, in respect of any unbilled Charges, we will invoice you for such Charges, which you agree to pay on demand;

**17.1.2 promptly pay to us any applicable Termination Fee**

**17.1.2.2 You acknowledge that Transparent Telecom shall be entitled to invoice the Customer 'you' any Termination Charges for either, the agreed Minimum Spend Levels that the customer would have paid for; had they not terminated the agreement early, or, if there is no minimum spend levels, the average charges over the previous six months' invoices prior to the date of termination times by the remaining months of the Minimum Term. The Customer further acknowledges that the above remedy for Transparent Telecom is a fair and reasonable estimate of loss' incurred as a**

**result of the early termination of the agreement by the customer.**

**17.1.3** return all equipment (including any Equipment) to us that you do not own or have any legal right to retain at the date of termination of this Agreement.

**17.2** Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination, and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination and expiry. For the avoidance of doubt the provisions of clauses 9 (*Confidentiality*) (in so far as it relates to our Confidential Information), 11 (*Intellectual Property*) and this clause 17 (*Consequences of Termination*) will survive termination or expiry of this Agreement.

## **Contacting each other**

### **18. Day to day contact**

**18.1** For day to day queries or if you wish to discuss any aspect of the Services, you can contact us by telephone on 0330 056 3377, or by email at support@transparenttelecom.co.uk

**18.2 You must keep us updated with any changes to your contact name, number, address, business name and any other material company information (including whether you become, or cease to be, a Small Business Customer) and agree to indemnify us in respect of any Liability arising out of your failure to do so.**

### **19. Formal communications or legal notices**

**19.1** Save as otherwise expressly stated in the Agreement, any formal notice to be given or made under or in connection with this Agreement by us to you, whether required to be written or otherwise will be sent by post, fax, or email, to any address, email address, fax, or phone number that you have specified in a Sales Order and/or on an Order Form or otherwise given to us in writing. For the avoidance of doubt this clause 19.1 shall not prevent us from publishing information generally to our customers (including the Price List) by posting such information on and making updates to the Website.

**19.2** Save as otherwise expressly stated in the Agreement, any formal notice given or made under or in connection with this Agreement by you to us, whether required to be written or otherwise shall be delivered to us by post or by hand to our registered office from time to time, addressed for the attention of the Legal Department.

**19.3** A notice sent pursuant to this clause 19 will be deemed received and properly served 24 hours after it is sent other than in the case of a notice sent by post, which shall be deemed to be delivered two Business Days after the date of posting.

## **Other legal provisions**

### **20. Assignment and other dealings**

**20.1** You may not assign, charge, sub-contract, transfer or deal in any other manner with all or any of your rights or obligations under this Agreement without our prior written consent.

**20.2** We may at any time assign, transfer, delegate, subcontract or deal in any other manner with all or any of our rights or obligations under this Agreement without at any time being required to consult with you or requiring your consent. We reserve the right to transfer your Services to a third party, Service Provider and/or Network Operator at any point during or outside of your agreement, without notice.

### **21. Force majeure**

**21.1** Other than in respect of your obligations to pay the Charges, which shall apply notwithstanding the provisions of this clause 21, neither of us shall be liable to the other for any breach of this Agreement or failure or delay to perform any obligation in this Agreement where such breach or failure or delay was the result of Force Majeure.

**21.2** In such circumstances the party affected by Force Majeure shall give written notice of its being affected by Force Majeure and the breach of this Agreement or failure or delay that is subject to this clause 21 within 24 hours of such breach or failure or delay, and thereafter shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of breach, failure or delay continues for 45 days, the other party may terminate this Agreement by giving 30

days' written notice to the party affected by Force Majeure or, at our option, we may immediately cease the provision of the Service to you until further notice.

## 22. General provisions

**22.1** This Agreement constitutes the entire agreement between us and, as at the Commencement Date, supersedes all prior negotiations, representations, proposals, understandings and agreements (whether written, oral or by electronic means) relating to<sup>8</sup> the subject matter of this Agreement. For the avoidance of doubt this Agreement shall supersede and take precedence over any other terms and conditions which you may purport to apply under any purchase order, acknowledgement of delivery or similar document or otherwise, and/or which have been established between the us by a course of dealing.

**22.2** Each of us acknowledges that, in entering into this Agreement and the documents referred to in it, we do not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement. In particular, our employees, agents and sub-contractors are not authorised to make any contractually binding representations concerning the Services. However, nothing in these terms and conditions limits our liability for fraudulent misrepresentation.

**22.3** Any quotation given by us to you will not constitute an offer, and is only valid for a period of seven days from its date of issue.

**22.4** If any of the provisions of this Agreement are, become or are held to be invalid, illegal or unenforceable, the relevant provisions shall be deemed not to be or never to have been or formed part of this Agreement and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. Furthermore, if any invalid, illegal or unenforceable provision of this Agreement would be valid, legal and enforceable if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it valid, legal and enforceable.

**22.5** The failure or delay by us to exercise or enforce any right, power or remedy under this Agreement shall not constitute 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 of any right, power or remedy on any later occasion.

**22.6** Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

**22.7** For the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 (the "1999 Act") the parties agree that they do not intend any term of the Agreement to be enforced by any third party except that our rights pursuant to the Agreement may be enforced by any of our Companies, the Network Operator, a Service Provider, or our licensors (as applicable), in accordance with the 1999 Act. Furthermore the parties agree that:

22.7.1 we may amend and/or vary or terminate all or any part of this Agreement (including these Calls and Line Rental Service Specific Terms) without the consent of any person who is not party to it; and

22.7.2 nothing stated in this clause 22.7 shall affect any third party right which exists or is available independently of the 1999 Act. Notwithstanding the foregoing sentence, the exclusion in this clause

22.7.3 shall not apply to any of our Group Companies.

## 23. Variation of the Agreement or the provision of the Services

**23.1 Subject always to clause 1.3, we may vary this Agreement at any time. Such varied terms shall be available to view upon request.**

**23.2 We may vary in our sole discretion the manner in which the Services are provided (without giving prior notice and without liability to you) if we, any of our suppliers, the Network Operator and/or any national or international regulatory body requires such variations in order to maintain and/or improve service quality, to meet any unforeseen circumstances or in order to comply with**

**any applicable law or regulation. Where such variation is necessary we will seek to give you as much notice as is practicable and whether or not any change to the terms of the Agreement is necessary.**

## 24. Governing law and jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed, construed and take effect by and in accordance with the law of England and Wales. Both you and we irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

# Part C. Fixed Voice Service Specific Terms

## 1. How the Fixed Voice Service is supplied

**1.1 How we provide the Services to you: Transparent Telecom Ltd provides services via WLR3 for telephone lines with Transparent Telecom Ltd . WLR3 means that Transparent Telecom Ltd will bill you for line rental of your line(s) and BT Openreach will continue to maintain your line and fix any faults that may occur. In all circumstances your phone line from the exchange to your premises will be continued to be maintained and repaired by BT Openreach.**

**1.1.2 Developments in network technology (known as Local Loop Unbundling or "LLU") may enable us to provide fixed line with broadband service to you through Next Generation Networks. If you have previously agreed to take our WLR service we may transfer you to an LLU network, but we will still offer the same services to you as those which you received from us before the transfer. If a Next Generation Network is available to you at the time of your transfer to Transparent Telecom Ltd, we may transfer you directly to this network. In all circumstances your phone line from the exchange to your premises will continue to be maintained and repaired by BT Openreach.**

**1.2. Carrier pre-selection (CPS) & Local Loop Unbundling (LLU) CPS & LLU is the routing of your services through a carrier other than BT. Your phone line(s) are still maintained by BT Openreach engineers but the calls and broadband service are carried on another network. We may select and at any time change any carrier or other service provider for the purposes of providing the CPS or LLU service. You hereby irrevocably authorise us to give all notices, nominations and other authorisations necessary for us to provide the CPS or LLU service.**

**1.3 Where we provide you with a Line, no other service provider may route Calls in respect of those Lines that we supply to you, and if they do then we reserve the right to bar such Calls.**

**1.4** On the day that a transfer pursuant to Part B paragraph 1.2 occurs, you may experience a short temporary loss of service of up to one working day. Thereafter, you may also have to re-set your access numbers and/or passwords. On completion of a transfer to LLU or MPF, you acknowledge and agree that:

1.4.1 certain telecommunications services purchased from or provided by other telephone providers, such as, but not limited to, indirect access services (whether using the BT 1280 or other indirect access codes) may no longer be available; and

1.4.2 you will no longer be able to use broadband or line rental services from other providers (and we will not be liable for any charges which may arise as a result of the termination of your contract with other providers of those services).

## 2. Transfers of Lines to us

2.1 Where we agree to the transfer of a Line to us, you agree to pay for any additional services that continue to exist on the

relevant Lines at the time of transfer to us that you have not made us aware of at the time of ordering, regardless of when such services are billed to us by our supplier.

2.2 Where we supply you with Calls by way of 'carrier pre-selection', you acknowledge that you may need to procure the cessation of any existing services that you receive from another provider to enable us to implement the Fixed Voice Service.

### 3. Revenue share services

3.1 Where we agree a revenue sharing arrangement with you in the context of an inbound telephony solution (a "revenue share service"), we may withhold any sums payable to you and any rebate due to you if:

3.1.1 in our reasonable opinion, Fraud has taken or is taking place;

3.1.2 the corresponding repayment or rebate to us from the Service Provider or any other originating operator or other relevant person has been withheld for any reason;

3.1.3 the Service Provider, BT or any other relevant person seeks or threatens to withhold from us payment of revenue or any other sums deriving from or attributable to the same revenue share service; and/or

3.1.4 the rebate is a *de minimis* sum of less than £5 (in which case we may keep it).

3.2 In the event that a claim is made against us by a Service Provider or any other originating operator or any other relevant person, under an interconnection agreement or otherwise for recovery of sums previously paid, and in respect of which revenue share or a rebate has already been paid to you, you agree to repay such sums to us that derive from the amounts that are recovered from us.

3.3 You agree to indemnify us in respect of any Liability howsoever suffered or incurred by us in connection with any Call made using a revenue share service save for any Liability arising as a direct result of our fraud or wilful misconduct.

### 4. Lines and telephone numbers

4.1 You have no title in any calling line identification (CLI) or number allocated to any Line you rent as part of the Fixed Voice Services. The CLI may not be transferred without our prior consent. Changes to the CLI allocated to a Line will be provided to other communications providers with services on that Line.

4.2 We will use all reasonable endeavours to provide you with number portability provided that:

4.2.1 there are no technical reasons preventing us from doing so; and

4.2.2 you pay any associated charges arising in relation to such transfer, not excluding take over fees.

4.3 Where, having used reasonable endeavours, we are unable to secure a number transfer from your previous supplier, we will provide you with a new number provided that you pay any associated Charges.

### 5. Call recording

5.1 Where your use of the Fixed Voice Services enables you to record calls, you warrant and represent to us that:

5.1.1 you have made yourself aware (and will procure that each End User is aware) of all legal rules and regulations governing the recording of Calls, including the circumstances in which and purposes for which such recording may be made, the length of time of retention of such information, the need to notify and manner of notification given to those taking part in such Calls; and

5.1.2 you will comply at all times with all relevant legislation relevant to the recording of Calls, including the Regulation of Investigatory Powers Act 2000, Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, Data Protection Act 1998, The Employment Practices, Data Protection Code, Telecommunications (Data Protection and Privacy) Regulations 1999, and the Human Rights Act 1998.

5.2 You agree to indemnify us and hold us harmless against all and any costs, claims, damages, expenses or other liabilities that we incur as a result of your breach of Part B paragraph 5.1

## Part D. Connectivity Service Specific Terms

### 1. Accessing the Connectivity Service

You are responsible for making all arrangements necessary for you to access the Connectivity Service, including (where applicable) your having (and being responsible for maintaining) a suitable Line supplied by us in order to access the Connectivity Service.

### 2. Your responsibilities

2.1 The configuration of any of your own equipment, network or other materials used in connection with the Connectivity Service is your responsibility. We and the relevant Service Provider and/or Network Operator shall have no liability in respect of such configuration or preparatory work to make the same ready for the supply of the Connectivity Service, nor for any liabilities suffered as a result of any alterations that you make to any Equipment that is pre-configured before it is supplied to you, nor for any interruption or loss of a Connectivity Service resulting from erroneous configuration of any Equipment or your own equipment, network or other materials.

2.2 We may allocate to you one or more passwords to enable you to use the Connectivity Service. You must keep any such passwords safe and confidential and notify us immediately if you have any reason to believe that a third party has become aware of them. We reserve the right to change the passwords without notice for any reason and shall not have any liability to you for any costs incurred as a result of such changes.

2.3 We and/or a Service Provider may inspect and monitor from time to time all usage being made of the Connectivity Service, including communications being sent and received and data being hosted and processed, in order to verify compliance with this Agreement.

2.4 You undertake that you will not (and will procure that End Users will not):

2.4.1 perform (or allow anyone else to perform) any unauthorised IP or port multicasting, spoofing, broadcasting, vectoring, filtering, translation or routing; and

2.4.2 connect any Equipment to any connection point other than that approved by us (and you acknowledge that where any Equipment is connected other than as so approved, your connection may be cut off without prior notice).

### 3. Service Standards

3.1 We do not warrant or guarantee the performance of the Connectivity Service or that the transmission of information over the internet by use of the Connectivity Service will be completely secure or that the internet will be accessible at all times or at any particular download or upload speeds indicated to you.

3.2 We will use reasonable efforts to minimise any downtime during which the Connectivity Service is unavailable (for example, due to essential maintenance or fixing system faults), and wherever practicable to carry out routine maintenance or upgrading at such times as traffic is generally at its lowest. Emergency or urgent maintenance may be carried out at any time and from time to time. You acknowledge that periodic downtime is an inevitable part of receiving the Connectivity Service and agree that we will not be liable to you for any losses or liabilities resulting from such downtime.

3.3 The Connectivity Service is provided to you on an 'as-is' and 'as-available' basis and to the fullest extent permitted by applicable laws we exclude all and any warranties and conditions of any kind, whether express or implied, in respect of it.

### 4. Intellectual property

4.1 You will have no right, title or interest in any IP address allocated to you in connection with the Connectivity Service (whether during the term of this Agreement or after its termination or expiry). Any allocated IP address is not portable or otherwise transferable by you in any manner whatsoever.

4.2 If an IP address is renumbered or reallocated by us and/or a Service Provider, we will use reasonable endeavours to avoid any disruption to you but, subject to clause 13.3 of the General Terms, we will have no liability to you in connection with any losses suffered in connection with such renumbering or reallocation.

## Part E. Telephony System and Maintenance Service Specific Terms

### 1. Risk and ownership of Equipment supplied as part of the Telephony System and Maintenance Service

1.1 We may supply you with a telephony system and/or related hardware (the "**Telephony System Service**") and/or maintenance services in relation to your telephony system (whether supplied by us under the Telephony System Service or not) (the "**Maintenance Service**"). We will discuss your requirements with you, but you acknowledge that it is ultimately your responsibility to determine whether the particular Equipment and/or Engineering Services supplied are suitable for your particular requirements.

1.2 Risk in all Equipment supplied pursuant to the Telephony System and/or Maintenance Services shall pass to you on delivery.

1.3 Unless otherwise specified in an Order Form or Verbal Agreement, all Equipment that we supply to you is leased to you. This means that you do not own the Equipment outright and it remains at all times our property or that of any third-party finance company to which we may have transferred ownership. You agree to deliver up the Equipment to us (or the relevant third-party finance company, as we may direct) upon termination or expiry of this Agreement. If you do not return the Equipment to us on request, we (or the relevant third-party finance company, as the case may be), and without prejudice to any other legal remedies that we or they may have, shall be entitled to enter the Site or any other premises under your control (without prior notice) and remove Equipment.

1.4 With effect from the date of delivery by us, you agree that if we request you to do so, you will insure any Equipment for its full replacement value with such insurance company as we may approve (such approval not to be unreasonably withheld) and you will provide to us a copy of the insurance certificate, which certificate shall note us (or the relevant third-party finance company, as we may direct) endorsed thereon as loss payee.

1.5 If an Order Form or Verbal Agreement specifies that certain Equipment is sold to you, title to such Equipment will not pass to you until the date that all Charges (and any additional sums payable by you pursuant to this Agreement) have been paid to us in full and in cleared funds.

1.6 Save for any Equipment to which title has passed to you pursuant to Part E paragraph 1.5, you are not entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal with or encumber any Equipment at any time, and to the extent that you breach the foregoing restriction in whole or part, any proceeds of sale or other consideration retained by you will be held on trust for us.<sup>10</sup>

1.7 You acknowledge and agree that we may order certain goods and services from third parties on your behalf in connection with this Agreement. In the event of any failure by such third parties to supply such goods and services, you will be solely responsible for pursuing any available remedies directly against that third party.

1.8 We warrant that the Equipment will be in good working order at the time of delivery and will be free from defects in materials and workmanship for a period of three months from the date of delivery, save that we will not be liable for breach of this warranty where any defect arises from fair wear and tear, misuse, abuse, the use of unsuitable consumables or failure to follow written instructions relating to the Equipment, or any alteration or repair to the Equipment made without our approval.

### 2. Your responsibilities

2.1 You are responsible for the safe use of all Services and, without prejudice to the generality of the foregoing, in relation to the Telephony System and/or Maintenance Service you undertake to (in each case insofar as is reasonably necessary to enable us to carry out our obligations under this Agreement):

2.1.1 make available to us without charge such computer and communications facilities, office facilities and services and suitable office space as requested and obtain all access rights that we require;

2.1.2 provide to us or to any relevant supplier as we may specify, and our and their employees, subcontractors or anyone acting on our or their behalf, unrestricted access (24 hours a day 7 days a week) either on site or remotely to any communications system, computer system, data, software and/or any other facilities as required by us to carry out our obligations under this Agreement, and you agree to procure and maintain all necessary licences or other access rights as necessary to permit such access;

2.1.3 ensure that any Intellectual Property Rights that we are required to use or modify in order to supply the Maintenance Service are either proprietary to you or properly licensed to you and that we are properly authorised to use or modify those Intellectual Property Rights. You agree to indemnify us in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of a third party's intellectual property rights;

2.1.4 ensure that adequate electrical power is supplied to all Equipment, that its external surfaces are kept clean and in good condition, that it is stored and maintained in accordance with all documentation supplied to you with it, and that it is not added to, modified or adjusted without our prior written consent; and

2.1.5 ensure that only our personnel are permitted to maintain, service or carry out adjustments to the Equipment.

2.2 Where we give you consent to make any changes to Equipment (for example to make programming changes), you agree:

2.2.1 that we will not be liable for any faults in relation to the Equipment where such alteration has caused or contributed to such fault;

2.2.2 we may (acting reasonably) disregard any service levels applicable to any altered Equipment where such alteration has affected our ability to perform our obligations under this Agreement; and

2.2.3 you will indemnify us and hold us harmless from and against any liability suffered or incurred by us arising out of the alteration of such Equipment.

### 3. Faults

Unless you notify us in writing of a material fault with any Equipment within seven days following delivery, you will be deemed to have accepted it. You acknowledge and agree that seven days is a reasonable period for the purpose of inspecting the Equipment and testing it for material faults.

**4. What is not included in the Maintenance Service** u to anything to the contrary stated on an Order Form/Verbal agreement, the Maintenance Service does not include any work, goods or services made necessary or which you request from us as a result of the following (for which we may charge an additional fee):

4.1.1 design defects in the Equipment or faulty manufacture, materials or workmanship;

4.1.2 any fault or defect occurring in any equipment not supplied and/or supported by us including network line faults and faults in BT's or any other third party's equipment or facilities;

4.1.3 accident, fault, act or omission of any person other than us;

4.1.4 use of Equipment in excess of any maximum usage specified by the manufacturer of the Equipment;

4.1.5 failure of electrical power (including power surges or power cuts), air conditioning, humidity or other environmental controls;

- 4.1.6 electrical infrastructure external to any Equipment;
  - 4.1.7 damage by vandalism, fire, water or adverse weather conditions;
  - 4.1.8 movement or relocation of the Equipment not performed by or on behalf of us;
  - 4.1.9 furnishing of the Equipment with accessories or attachments, painting or finishing the Equipment or removing accessories or attachments;
  - 4.1.10 breach of your obligations in this Agreement;
  - 4.1.11 hardware, accessories, attachments, machines, systems or other devices not referred to in an Order Form;
  - 4.1.12 rectification of lost or corrupted data arising from any reason other than our negligence;
  - 4.1.13 maintenance services rendered more difficult because of any changes, alterations, additions, modifications or variations to facilities at the Site;
  - 4.1.14 your failure to maintain comprehensive and fully operational back-up of all Customer Data; and
  - 4.1.15 diagnosis and/or rectification of problems not associated with Equipment supported by us under this Agreement.
- 4.2 Where we install software and/or applications to your LAN/WAN infrastructure, it will remain your responsibility to ensure that it is available and complete at the time of our installation, and you will ensure the network is maintained in order that all applications and software are able to run at their optimum level. Any faults found to be a result of the LAN/WAN or any other network will be charged to you separately at a rate to be agreed before we carry out further work.