

# Service Agreement - Terms and Conditions

## Background

Telephone Europe shall supply Equipment and Services as requested by the Customer in accordance with the terms and conditions of this Agreement. It is agreed as follows:

## Definitions

In this Agreement the following definitions shall have the following meanings:

- “Telephone Europe” Telephone Europe (company registration number 05531603) of James Stanley & Co, 1733 Coventry Road, South Yardley, Birmingham, B26 1DT.
- “Agreement” these Conditions together with any Order Form referable to these Conditions.
- “Change Request” a request for a change made by Customer or Telephone Europe. “Charges” the charges to be paid by Customer to Telephone Europe in respect of goods and services supplied upon Customer’s request (including without limitation those charges set out in an Order Form).
- “Conditions” these Telephone Europe Terms and Conditions.
- “Customer Facilities” all hardware, software, ancillary equipment, telecommunications, storage and other facilities owned or controlled by Customer.
- “Delivery Address” the address stated in an Order Form to which Equipment will be delivered.
- “Documentation” any specifications, technical manuals, user instructions or other documentation supplied by Telephone Europe.
- “Equipment” the equipment detailed in an Order Form.
- “IP Right” any copyright, patent, registered design, trademark or other intellectual property right (or applications therefore) of whatever nature subsisting anywhere in the world.
- “Manufacturer” the manufacturer of Equipment.
- “Order Form” an order form referable to this Agreement which describes the Equipment and Services and confirms certain details of this Agreement.
- “Proper Use” the use of Equipment strictly in accordance with Documentation and/ or any instructions or recommendations notified by Telephone Europe from time to time. “RPI” means the Retail Price Index being the general index of retail prices published by the Office for National Statistics each month in respect of all items.
- “Services” the services identified in this Agreement to be supplied to Customer by Telephone Europe in consideration of related Charges.

A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

Words in the singular include the plural and in the plural include the singular. Headings do not affect the interpretation of these Conditions.

## 1. Application of Conditions/ Scope of Agreement

- 1.1 Subject to any variation under clause 1.3, the Agreement shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document shall form part of the Agreement simply as a result of such document being referred to in the Agreement.
- 1.3 These Conditions apply to all Telephone Europe’s sales and any variation to these Conditions and any representations about the Equipment or Services shall have no effect unless expressly agreed in writing and signed by a director of Telephone Europe. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Telephone Europe which is not set out in the Agreement. Nothing in these Conditions shall exclude or limit Telephone Europe’s liability for fraudulent misrepresentation.
- 1.4 Each order or acceptance of a quotation by the Customer from Telephone Europe shall be deemed to be an offer by the Customer to proceed subject to these Conditions.
- 1.5 No order placed by the Customer shall be deemed to be accepted by Telephone Europe until a written acknowledgment of order is issued by Telephone Europe or (if earlier) Telephone Europe delivers the Equipment and/ or Services to the Buyer.
- 1.6 In consideration of the payment by the Customer of Charges and any other sums due from Customer, Telephone Europe shall supply the Equipment and Services as described in this Agreement. This Agreement will be binding when signed by an MD or Service Director of Telephone Europe.
- 1.7 Telephone Europe shall carry out the obligations set out in clause 1.1 with reasonable skill and care and in accordance with an Order Form.
- 1.8 Unless expressly agreed in writing by Telephone Europe the time for performance of any obligation by Telephone Europe shall not be of the essence of this Agreement.
- 1.9 Customer acknowledges that Telephone Europe will supply the Equipment and Services at the request of Customer and that it is Customer’s responsibility to determine whether the Equipment and Services are suitable for its requirements.
- 1.10 Subject to any variation permitted in accordance with these Conditions, the Agreement will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

## 2 Terms of Payment

- 2.1 In consideration of Telephone Europe supplying Equipment and Services, the Customer shall pay to Telephone Europe the Charges subject to the terms of this Agreement.
- 2.2 Payment of sums due from the Customer to Telephone Europe shall be made within fourteen (14) days of the receipt of an invoice from Telephone Europe. All payments hereunder shall be made in Pounds Sterling.
- 2.3 Charges are expressed exclusive of all duties and taxes including without limitation value added tax which shall be paid by the Customer at the rate and in the manner provided by the law governing this Agreement.
- 2.4 Telephone Europe reserves the right to increase the Charges payable in respect of Equipment to reflect any increase in cost to Telephone Europe which is due to any factor beyond Telephone Europe's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties) provided Telephone Europe gives written notice to the Customer at any time.
- 2.5 Telephone Europe reserves the right to increase the Charges Services on each anniversary of this Agreement up to ten percent (10%) or, if greater, by a percentage equal to the percentage increase in RPI over the preceding 12 months.
- 2.6 In the event that Customer fails to pay any sum by the due date Telephone Europe reserves the right to charge interest on the outstanding amount at the rate of five per cent (5%) above UK HSBC Bank base rate per month calculated at a daily rate from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgment or award in respect of the same).
- 2.7 Both parties acknowledge that time for payment of Charges is of the essence of this Agreement. Notwithstanding clause 2.6, if Customer fails to pay any sum by the due date Telephone Europe may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or suspend performance of this Agreement.
- 2.8 If Telephone Europe shall terminate this Agreement for any reason, any sums (including interest for the late payment) will immediately become payable in full.
- 2.9 This Agreement is strictly subject to credit clearance in respect of the Customer and Telephone Europe may forthwith terminate this Agreement if it is not satisfied with such credit clearance in its sole discretion. All required documentation as directed by Telephone Europe (or any third party finance company) must be fully completed by the Customer within 7 days of the date of the Order Form or delivery of Equipment, whichever is the earlier.

## 3 Delivery and Installation

- 3.1 Delivery and installation of Equipment shall be made at the Delivery Address.
- 3.2 Telephone Europe shall use all reasonable endeavours to deliver Equipment upon any delivery date indicated in an Order Form or as soon thereafter as is possible. If delivery will be before or after the delivery date indicated in an Order Form, Telephone Europe will use reasonable endeavours to give Customer not less than 24 hours notice of the actual delivery date.
- 3.3 Upon delivery Customer shall make available to Telephone Europe (or Telephone Europe's delivery agent) free of charge such labour and equipment as is required to effect delivery and installation of Equipment at the Delivery Address. Upon completion of delivery Customer shall be solely responsible for the removal and disposal of all packing cases and other containers in which Equipment was delivered and upon completion of installation Customer shall be solely responsible for making good and cleaning the premises.
- 3.4 Unless Customer notifies Telephone Europe in writing of a material fault within the Equipment within 7 days following delivery Customer shall be deemed to have accepted the Equipment. The Customer agrees that 7 days is a reasonable period for the purpose of inspecting the Equipment and testing the same for material faults.

## 4 Risk and Ownership of Equipment

- 4.1 Unless otherwise specified in an Order Form all Equipment supplied pursuant to this Agreement is leased to the Customer. It is the Customer's sole responsibility to agree appropriate arrangements for third party finance as required by the Customer.
- 4.2 Risk in Equipment shall pass to Customer upon delivery.
- 4.3 In respect of Equipment that is leased to the Customer, the Equipment shall remain the property of Telephone Europe or any third party finance company to which Telephone Europe has transferred ownership ("Owner") at all times and the Customer shall deliver up the Equipment to Telephone Europe (or its third party finance company) upon termination or expiry of this Agreement. In the event of a failure by the Customer to do so, Telephone Europe (or the Owner) shall (without prejudice to any other legal remedies it may have) be entitled to enter upon the Delivery Address or any other premises under Customer's control (without notice to Customer) and remove Equipment. With effect from delivery the Customer shall upon request by Telephone Europe insure the Equipment for its full replacement value with such insurance company as Telephone Europe shall approve (such approval not to be unreasonably withheld) and shall provide a copy of the insurance certificate to Telephone Europe which certificate shall have Telephone Europe (or its third party finance company) endorsed thereon as loss payee.
- 4.4 In respect of Equipment sold to the Customer, title to Equipment shall not pass to Customer until the date that Charges (and any additional sums payable by Customer pursuant to this Agreement) and value added tax thereon have been paid in full to Telephone Europe.
- 4.5 (Except in respect of Equipment to which title has passed to the Customer pursuant to this Agreement) the Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber Equipment and the relationship between Telephone Europe and Customer in respect of Equipment including any proceeds of sale or other consideration therefore shall be a fiduciary one.
- 4.6 If the Customer fails to effect payment in full of all sums due hereunder by the due date then Telephone Europe (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Delivery Address or any other premises under Customer's control (without notice to Customer) and remove Equipment.
- 4.7 If in breach of this clause 4 the Customer sells (i) Equipment that is leased, or (ii) Equipment that is sold prior to title passing to the Customer then any proceeds of sale in respect thereof and all rights arising under or in respect of said sale shall be held (in the case of the proceeds of sale in a separate account) by Customer as trustee for Telephone Europe (or the Owner).

## 5 Customer Facilities

- 5.1 Customer shall test Customer Facilities, ensure that Customer Facilities are complete and in good working order, ensure that all specifications are not less than the minimum determined by Telephone Europe. Upon a date to be notified by Telephone Europe,

- Telephone Europe may inspect Customer Facilities at the Customer's premises in accordance with the terms of this Agreement.
- 5.2 Telephone Europe shall indicate to Customer in writing whether Customer Facilities are suitable for the purpose of Telephone Europe supplying and installing the Equipment and supplying the Services and, if Customer Facilities are not suitable, the necessary steps to be taken by Customer (at Customer's expense) to make Customer Facilities suitable.
  - 5.3 Customer shall use reasonable endeavours to complete any work notified by Telephone Europe at each location within seven (7) days of notification by Telephone Europe and in particular to reflect any Telephone Europe requirements.
  - 5.4 Telephone Europe may perform repeat inspections (and the procedure outlined in this clause 5) until Telephone Europe is satisfied that Customer Facilities are suitable for the purpose of Telephone Europe supplying the Equipment and Services.

## 6. Customer's Obligations

- 6.1 Customer shall (in each case insofar as is reasonably necessary to enable Telephone Europe to effectively carry out its obligations under this Agreement):
  - 6.1.1 Make available to Telephone Europe free of charge such computer and communications facilities, office facilities and services and suitable office space as requested and obtain all access rights required by Telephone Europe;
  - 6.1.2 Ensure that its employees or other independent contractors co-operate reasonably with Telephone Europe and its employees;
  - 6.1.3 Promptly furnish Telephone Europe with such information (including with out limitation IP addresses) and documents as are reasonably requested;
  - 6.1.4 Pay all Charges properly invoiced by Telephone Europe;
  - 6.1.5 Take all reasonable steps to ensure the health and safety of Telephone Europe employees, agents or independent contractors subject to such employees, agents or independent contractors complying with any Customer health and safety policy notified in writing by Customer;
  - 6.1.6 Ensure that any IP Rights which Telephone Europe is required to use or modify in order to supply Maintenance Services is/are either proprietary to Customer or properly licensed to Customer and that Telephone Europe is properly authorised to use or modify the IP Rights. Customer shall indemnify and hold harmless Telephone Europe in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Telephone Europe or Customer;
  - 6.1.7 Ensure that adequate electrical power is supplied to the Equipment;
  - 6.1.8 Store and maintain Equipment in accordance with Documentation;
  - 6.1.9 Keep the external surfaces of the Equipment clean and in good condition;
  - 6.1.10 Operate the Equipment strictly in accordance with Documentation and ensure that only competent and trained persons operate the Equipment;
  - 6.1.11 Not make any addition, modification or adjustment to the Equipment without the prior written consent of Telephone Europe;
  - 6.1.12 Use only media and consumables approved by the Manufacturer or by Telephone Europe in writing (Telephone Europe's approval not to be unreasonably withheld); and
  - 6.1.13 Ensure that only Telephone Europe's personnel are permitted to maintain, service or carry out adjustments to the Equipment.
- 6.2 The Customer is solely responsible for maintaining Customer facilities in order that the Equipment functions in accordance with Documentation.

## 7. Warranties and Liability

- 7.1 Telephone Europe warrants 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 3 months from the date of delivery.
- 7.2 Telephone Europe shall be under no liability under the warranty in clause 7.1 in respect of any defect arising 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 without Telephone Europe's approval. Telephone Europe shall have no liability for any customers telephone system that may be hacked or incur excessive call charges due to a third party accessing the customers telephone system and affecting the call routing patterns.
- 7.3 Customer is responsible for all charges incurred for the use of the Services, irrespective of whether the Services have been used by the Customer, its employers, agents or representatives and any unauthorized third party.
- 7.4 The Customer will be responsible for:
  - 7.4.1 Preventing unauthorised use of the Services;
  - 7.4.2 Maintaining the security of all systems, network elements and equipment within its (or its employees, agents or contractors) control; and
  - 7.4.3 Maintaining (and insuring that each of its authorised users maintains) the integrity and secrecy of all passwords, login details and access codes used for the purposes of accessing or using the Services or any systems, network elements or equipment.
- 7.5 The Customer will notify Telephone Europe immediately of any illegal, fraudulent or unauthorised use of the Services. On receipt of such notice, Telephone Europe shall use reasonable efforts to suspend or prevent such use by the unauthorised third party.
- 7.6 Telephone Europe will be entitled to suspend or terminate the provision of the Services upon receiving notice required from Customer as above. Telephone Europe will lift its suspension or recommence its provision of the Services within a reasonable timescale after Customer demonstrates to Telephone Europe's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use of the Services. The Customer will remain liable for the payment of the charges for the Services whilst the Services are suspended or terminated.
- 7.7 Where Telephone Europe has the right to suspend or terminate the Services as above and the conditions under which Telephone Europe is required to lift its suspension or recommence its provision of the Services have not been met within 30 days of the date on which Telephone Europe has received the relevant notice, Telephone Europe shall be entitled to terminate this Agreement immediately or on such other notice as Telephone Europe may consider appropriate in the circumstances.
- 7.8 Where Telephone Europe is the provider of network services to Customer, the provisions concerning fraudulent activity in those Terms and Conditions shall apply in place of these.

## 8. Services

- 8.1 Telephone Europe shall supply the Services for the period set out in the Service Agreement or otherwise (if no such period is set out in the Service Agreement) for a minimum period of 60 months. Thereafter Telephone Europe shall supply the Services for successive 12 month periods subject to termination by either party giving not less than 90 days prior written notice, such notice not to have effect earlier than the end of any agreed period.
- 8.2 The Services comprise the following:

- 8.2.1 In respect of Equipment that comprises a telephone system (“Telephone System”) Telephone Europe agrees to maintain the Telephone System during normal working hours during the term in which the Customer pays Charges for such Services. Repairs will be made free during this period except where accidental damage, lighting strike, neglect or abuse occurs. Services includes maintenance of the system central control unit, system cabling and system key telephones. Services does not include maintenance of any other item including without limitation non-proprietary handsets, headsets, modems, music on hold, connected computers and computer interfaces, computer software and middleware, cordless telephones. PA systems, door intercom equipment and other ancillary equipment which may be covered under the terms of the Manufacturer’s guarantee unless otherwise stated overleaf. Any Equipment added at a later time may increase the Charges payable in respect of Services. Following the guarantee period, if the Telephone System is not subject to maintenance Services under this Agreement, repairs will be charged for at Telephone Europe’s current list prices (this will include diagnostic checks and alterations made by remote access). Any reprogramming or new provisions will be charged to the Customer.
- 8.2.2 In respect of any Equipment comprising a voice mail system (“Voice Mail System”) Telephone Europe agrees to maintain the Voice Mail System during the term in which the Customer pays Charges for such Services. Repairs will be made free during this period except where accidental damage, lighting strike, neglect or abuse occurs, or the fault is due to Customer error. Any reprogramming of or new provisions in relation to the Voice Mail System will be charged to the Customer.
- 8.3 Upon a request by the Customer, Telephone Europe shall at the earliest practicable opportunity, cause technical staff to attend and/or repair the Equipment during Telephone Europe’s normal working hours. Telephone Europe will use reasonable endeavours to respond to faults that Telephone Europe considers to be major faults within 4 working hours as appropriate and where possible and otherwise within 16 working hours. Working hours are between 09:00 to 17:00 hours Monday to Friday excluding Bank Holidays.
- 8.4 Services shall not include the supply of consumable items which shall be payable in addition by the Customer at Telephone Europe’s prevailing rates which are available on request.

## 9. Exclusions

- 9.1 Services does not include any work made necessary by the following (for which Telephone Europe may charge in addition at agreed rates):
- 9.1.1 Design defects in the Equipment or faulty manufacture, materials or workmanship;
- 9.1.2 Fault or defect occurring in any equipment not supplied and/ or supported by Telephone Europe including without limitation network line faults and faults in BT or other third party equipment and facilities;
- 9.1.3 Use of Equipment outside Proper Use;
- 9.1.4 Accident, fault, act or omission of any person other than Telephone Europe;
- 9.1.5 Use of Equipment in excess of any maximum usage specified by the Manufacturer; 9.1.6 failure of electrical power (including power surges or power cuts), air conditioning, humidity or other environmental controls;
- 9.1.7 Electrical work external to any Equipment;
- 9.1.8 Damage by vandalism, fire, water or adverse weather conditions;
- 9.1.9 Movement or relocation of the Equipment not performed by or on behalf of Telephone Europe;
- 9.1.10 Furnishing of the Equipment with accessories or attachments, painting or finishing the Equipment or removing accessories or attachments;
- 9.1.11 Breach of the Customer obligations in this Agreement;
- 9.1.12 Hardware, accessories, attachments, machines, systems or other devices not referred to in an Order Form;
- 9.1.13 Rectification of lost or corrupted data arising for any reason other than Telephone Europe’s own negligence;
- 9.1.14 Maintenance Services rendered more difficult because of any changes, alterations, additions, modifications or variations to Customer Facilities;
- 9.1.15 A failure of Customer to maintain comprehensive and fully operational back-up of all Customer data; and
- 9.1.16 Diagnosis and/ or rectification of problems not associated with Equipment supported by Telephone Europe under this Agreement.
- 9.1.17 Telephone Europe will install software and applications to the customer’s LAN/WAN infrastructure, it will remain the customer’s responsibility to ensure that it is available and complete at the time of Telephone Europe’s installation and the customer will be responsible to 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 network will be charged at up to £750 per day.
- 9.2 Any failure in the programme of least cost routing must be reported to Telephone Europe within 24 hours of programming. Telephone Europe will supply the Customer with test numbers at the Customers request for the Customer to prove the programming.
- 9.3 The Customer agrees that:
- 9.3.1 Telephone Europe may order certain goods and services from third parties on behalf of the Customer in connection with this Agreement; and
- 9.3.2 Telephone Europe shall not be liable in respect of any failure by such third parties to supply such goods and services and the Customer shall be solely responsible for pursuing any available remedies directly against the third party.

## 10. Customers Responsibilities

- 10.1 The Customer shall:
- 10.1.1 Indemnify Telephone Europe in full from and against all costs, claims, demands, liabilities, expenses, damages or losses including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with the Customer’s negligence, default or breach of these Terms.
- 10.1.2 Keep the Equipment in its possession and in the United Kingdom and shall not move it without Telephone Europe’s prior written consent which shall not be unreasonably withheld. Telephone Europe shall charge for such a move if the Customer fails to notify Telephone Europe; and
- 10.1.3 Arrange, at its own expense, for the provisions of any equipment or services by their chosen network provider, which may be necessary for the installation and operation of the Equipment, including all charges for the provision of lines or services.

## 11. Change Control

- 11.1 If either party identifies a requirement for a change to the Equipment or Services it shall send a request to the other party detailing

the change requirements.

- 11.2 If sent by Telephone Europe, the new order form shall state the effect such a change shall have upon the Equipment, Services and Charges. If sent by Customer, the receipt of the new order form or PO by Telephone Europe will constitute a request to Telephone Europe. The new order form or PO should confirm the effect such a change shall have upon the Equipment, Services and Charges. Telephone Europe shall use reasonable endeavours to acknowledge acceptance of such details within seven (7) working days from receipt of a new order form or PO.
- 11.3 Where a change to Charges is required the additional cost shall be confirmed in writing by Telephone Europe. The parties will then decide whether or not to implement the change. If the change is implemented, the amended equipment, services and charges (as applicable) shall then become the Equipment, Services and Charges for the purpose of this Agreement.
12. IP Rights
- 12.1 Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Equipment and Services shall be and shall remain the sole property of Telephone Europe or such other party as may be identified therein or thereon and Customer shall not at any time dispute such ownership.
- 12.2 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, Customer acknowledges that the same shall be the property of Telephone Europe unless otherwise agreed in writing by Telephone Europe.

## 13. Warranties and Liability

- 13.1 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of any goods or services (including without limitation Equipment and Services) provided hereunder will be assumed by Telephone Europe and except as expressly provided in this Agreement all such warranties, conditions, undertaking and Conditions are hereby excluded.
- 13.2 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 13.3 The liability of Telephone Europe in respect of breaches of this Agreement or of any other duty to Customer or for negligence in connection with the subject matter of this Agreement shall be limited to the aggregate value of Charges due to Telephone Europe under this Agreement.
- 13.4 Subject always to clause 13.2, in no event shall either party be liable to the other for any of the following however and whenever arising:
  - 13.4.1 Loss of profits, business, revenue, data, goodwill or anticipated savings; and/ or
  - 13.4.2 indirect or consequential loss or damage.
- 13.5 Each party agrees that the limitations of liability contained in this clause 9 have been discussed, negotiated and agreed between the parties in the context of the other provisions of this Agreement and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Conditions Act 1977.
- 13.6 The parties expressly agree that should any limitation or provision contained in this Agreement be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## 14. Force Majeure

- 14.1 Neither party will be under any liability to the other for, damage, delay or any other matters of that nature whatsoever arising out of any failure by a third party supplier, war, rebellion, civil commotion, strikes, lock outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather or the requisitioning or other act or order by any Government department, council or other constituted body ("Force Majeure"), provided always that both parties will use all reasonable endeavours (but without an obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.

## 15. Termination and Suspension

- 15.1 Either party may forthwith terminate this Agreement by written notice to the other if any of the following events occur:
  - 15.1.1 If either party commits any breach of the Agreement and fails to remedy such breach within thirty (30) days after receiving written notice requiring remedy;
  - 15.1.2 If either party becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed of the whole or substantially the whole of its undertakings or if the other party is unable to pay its debts in accordance with the law relating to this Agreement;
  - 15.1.3 A Force Majeure continues for a period of more than 3 months.
- 15.2 Telephone Europe shall be entitled to terminate this Agreement forthwith on written notice to the Customer:
  - 15.2.1 If the Equipment is serviced by any party other than Telephone Europe;
  - 15.2.2 If the Customer misuses or abuses the Equipment;
  - 15.2.3 If any instalment of the Price or Service Charge is unpaid for seven days or more.
- 15.3 Without prejudice to any right of termination either party shall be entitled by immediate notice to suspend performance of some or all of the Services specified in this Agreement upon the occurrence of circumstances specified in clause 15.1, and the Agreement will in any event be deemed suspended in the event of Force Majeure.
- 15.4 Termination or suspension of this Agreement will be without prejudice to any accrued rights or obligations of either party.

## 16. Confidential Information

- 16.1 All information, data, drawings, specifications, documentation, software listings, source or object code which Telephone Europe may have imparted and may from time to time impart to Customer relating to this Agreement in whatever media is proprietary and confidential. Customer hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without the prior written consent of Telephone Europe.
- 16.2 The foregoing provisions shall not prevent the disclosure or use by Customer of any information which is or hereafter through no fault of Customer becomes public knowledge or to the extent permitted by law.



## 17. **Entire Agreement**

17.1 This Agreement:

17.1.1 Represents the whole agreement and understanding between the parties in respect of the matters referred to herein; and  
17.1.2 Shall, except in the case of fraud, override and no reliance shall be placed upon any other verbal or written representations, warranties or understandings in respect of the subject matter of this Agreement including, without limitation, any conflicting provisions of any conditions of purchase notified by Customer.

17.2 The remedies available to the parties are exclusively those available under this Agreement.

17.3 The parties acknowledge that they have expressly negotiated and agreed the terms of this clause 17.

## 18. **General**

18.1 No amendment to this Agreement shall be binding unless made in writing and signed by both the Customer and Telephone Europe's MD or Service Director.

18.2 Customer shall not sub-contract, assign, charge or otherwise transfer to a third party any of its rights or obligations hereunder without the prior written consent of Telephone Europe. Telephone Europe may at any time assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it.

18.3 No waiver of any breach of the other party's obligations hereunder shall represent a waiver of the waiving party's rights hereunder or of any subsequent breach.

18.4 The parties respectively shall and shall procure that any other necessary party shall execute and do all such documents, acts and things as may reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the parties under this Agreement.

18.5 None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

18.6 Any notice to effect suspension or termination of the whole or any part of this Agreement:

(i) shall be made in writing and either delivered personally or sent by first class recorded delivery to the party to whom the notice is addressed at its address as set out in this Agreement or such other address as one party may specify by notice in writing to the other;

(ii) In the absence of evidence of earlier receipt notice shall be deemed to have been duly given:

(a) If delivered personally, when left at the address referred to in clause 18.6 (i);

(b) If sent by first class recorded delivery, at the time recorded by the delivery agent.

18.7 For the avoidance of doubt electronic mail shall be deemed to be "writing" for the purpose of this Agreement but this shall not prejudice the express requirements for delivery of notices under clause 18.6.

18.8 If any provision of this Agreement is held to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

18.9 This Agreement shall be binding on and shall continue for the benefit of the permitted successors and permitted assigns (as the case may be) of each of the parties hereto.

18.10 All provisions of this Agreement shall so far as they are capable of being performed and observed continue in full force and effect notwithstanding any expiry or earlier termination.

## 19. **Applicable Law**

19.1 This Agreement shall be governed by and construed in accordance with English law and each party to this Agreement submits to the exclusive jurisdiction of the English courts.