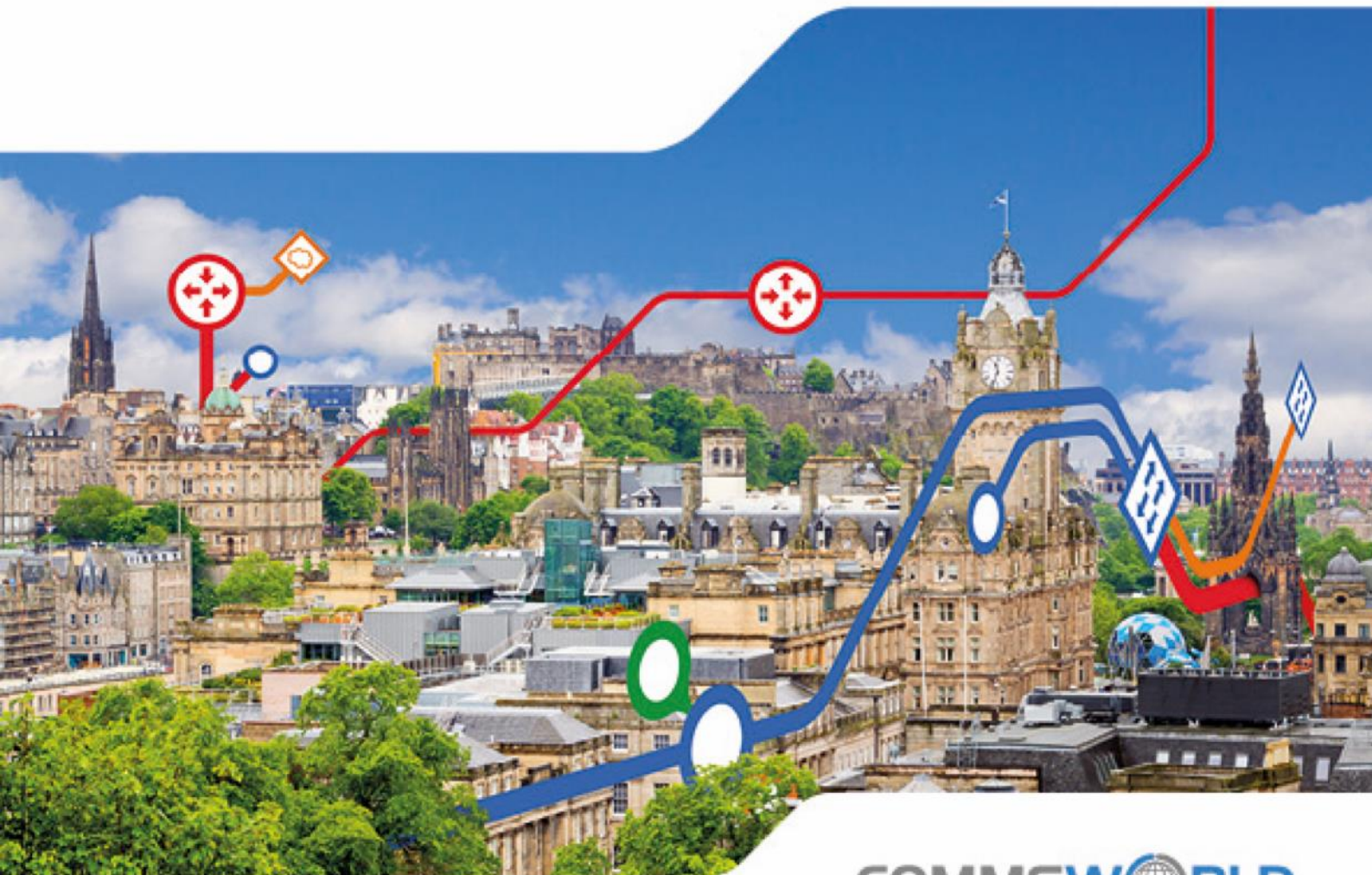


# Commsworld General Terms & Conditions

August 2021



COMMSWORLD

Your business better connected  
[commsworld.com](http://commsworld.com)

## **General Conditions**

These conditions (the “Conditions”) apply to the provision of all Service(s) and/or Equipment (both terms as defined below) to you by Commsworld Limited, a company registered in Scotland (Company Number: SC150343), whose registered office is at Commsworld House, Pepper Place, Edinburgh EH16 4BB (“Commsworld”). These Conditions should be read in conjunction with the relevant Service Specific Conditions (as defined below)

### **1. DEFINITIONS**

1.1 In this Agreement, the following words and expressions shall, unless stated otherwise, have the following meanings:

“Agreement”	means the agreement between you and Commsworld for Service(s) and/or Equipment, comprising the documents referred to in your order or Proposal;
“Agreement Date”	means the date of the Proposal is signed and agreed between the parties;
“AUP”	means the acceptable use policy which applies to your use of the Service(s) and/or Equipment which is detailed in Schedule 2
“Business Days”	means Monday to Friday between 09:00 and 17:00, excluding UK public holidays and January 2nd (Scotland only);
“Business Hour(s)”	means any hour(s) during a Business Day;
“Carrier”	means any supplier we use in delivering your Service;
“Charges”	means any charges payable by you for the Services;
“Clause”	means a specific clause within this agreement
“Co-Location Facility”	means the Commsworld facility detailed in the Proposal where Customer Equipment, the Dedicated Server and/or Network Equipment is located;
“Commsworld IP Address”	means a resource IP Address or IP Addresses which are capable of aggregation and which have been obtained by the Customer from Commsworld;
“Commsworld System”	means the telecommunications system we use in accordance with the General Conditions;
“Commsworld Website”	means the website at <a href="http://www.commsworld.com">www.commsworld.com</a> or such other url as we may notify you of during this Agreement;
“Condition(s)”	means a specific condition(s) within the Service Specific Conditions;
“Confidential Information”	means information of either party, whether oral or written and including all trade secrets, know-how or other information marked as confidential or which is by its nature confidential disclosed by one party to the other pursuant to this Agreement;
“Connection”	the link that allows services between the Commsworld core Infrastructure and the Customer Equipment;
“Customer”	means the party identified within the relevant Proposal;
“Customer Equipment”	means any equipment, not being Equipment which you use and/or maintain in conjunction with the Equipment to obtain the Services;
“Customer Premises”	means premises to which we agree to provide Service(s) to you;

"Customer Service Plan"	means the Commsworld service plan which outlines how we manage our customers service(s);
"Data Protection"	means how Commsworld will manage your personal data;
"Data Protection Officer"	means the accountable person within Commsworld who is responsible for data compliance;
"Dedicated Server"	means any server Equipment made available for your use at the Co-Location Facility for you to use;
"Direct Debit Instruction"	means an instruction to your bank or building society to pay Commsworld the Charges under the Direct Debit Guarantee;
"Direct Debit Guarantee"	means the direct debit guarantee contained within the Proposal;
"EFM"	means Ethernet first mile - a Leased Line service which uses G.SHDSL.bis (ITU Unit G.991.2 (2004)) technology;
"Equipment"	means any equipment, not being Customer Equipment, provided and used by Commsworld and/or third parties on our behalf at the Customer Premises or our Co-Location Facility in order to provide the Services under this Agreement;
"Event"	a problem concerning one of the Co-Location Services is either detected by our monitoring systems or reported by you in accordance with Condition 5;
"Fibre Ethernet"	means a Leased Line which carries traffic and terminates at the Customer Premises using ethernet technology;
"Half Rack"	means space equivalent to either the top or bottom half or a 42Unit high 19" rack;
"Hosted PBX"	means the hosted and managed telephony system provided by Commsworld. This service is managed in respect of the functionality and the Equipment necessary at the Customer Premises. The feature list includes basic call setup within the Hosted PBX, to other Hosted PBXs and to the PSTN and supplementary services such as call diversions, do not disturb, voicemail, hunt groups, call transfer, call pick up and music on hold;
"Hosting & other Services"	means virtual web hosting, databases, domain & SSL certificate registration, and associated Services;
"IP"	means internet protocol;
"IP Address(es)"	means an internet protocol address;
"IPR"	means intellectual property rights;
"IP Transit"	means a connection to the Internet using the TCP/IP protocol, provided at a particular bandwidth or speed. The bandwidths and speeds quoted are maximum theoretical line speeds and actual throughput will be affected by a variety of factors including, but not limited to: latency, operating system version and settings, host capability and load, and congestion on the Internet beyond the Commsworld System;
"Initial Period"	means the initial period in respect of each Service provided under this Agreement as specified in the Proposal which in any case shall be no less than 12 months from the relevant Service Commencement Date;

"Internet"	means the interconnected system of networks that connects computers around the world enabling the transmission and exchange of electronic information and data;
"Leased Line"	means a symmetric telecommunications line connecting 2 locations. Unlike traditional PSTN lines it does not have a telephone number, each side of the line being permanently connected to the other. Leased Lines can be used for telephone, data or Internet services;
"Licensed Space"	means the space allocated to the Customer Equipment by Commsworld at the Co-Location Facility, being determined in Floor Space Racks, Quarter Racks, Half Racks or individual Units and/or incorporating a Cage;
"Material Service Level Default"	means a failure to achieve a minimum service level in respect of a particular Service as set out in Clause 12.3;
"Network Equipment"	means any and all equipment owned and installed by Commsworld for use by the Customer in the Co-location Facility;
"Ofcom"	means the regulator for the communications industry in the UK to include any replacements for Ofcom from time to time;
"PBX"	means a private branch exchange; telephone switching system or service;
"Personal Identifiers"	means reference numbers provided to you which identifies the services delivered by Commsworld;
"Proposal"	means the proposal or Service Order(s) (and any schedules to the proposal) completed by the Customer and Commsworld which documents the Equipment and/or Services we will supply to you, together with the Charges;
"PSTN"	means the public switched telephone network;
"Quarter"	means three (3) calendar months commencing on the Service Commencement Date with each subsequent Quarter commencing on the day following expiry of the last;
"Quarter Racks"	means a space equivalent to a quarter of a 42Unit high 19" Rack;
"Racks"	means racks or rack space units which unless otherwise stated measure 600mm wide x 800mm deep usable space for a 19" rack system, not including appropriate corridor space;
"Recurring Charges"	means any element of the Charges which is payable periodically (e.g. weekly, monthly, quarterly or annually) as set out in the Proposal;
"Renewal Period"	means the renewal period in respect of each Service provided under this Agreement;
"RIPE IP Address"	means Commsworld provided independent resource IP address or IP addresses obtained directly from RIPE NCC;
"RIPE NCC"	means the Réseaux IP Européens Network Co-ordination Centre;
"Schedules"	means, where applicable, any schedules forming part of this Agreement;
"Service Commencement Date"	means the date(s) from when the Services are handed over and signed off by you;

"Services"	means the services Commsworld provide to you under this Agreement;
"Service Credits"	means the credits due should Commsworld fail to deliver against the Service Levels;
"Service Level"	means any service level standards as detailed in the Service Specific Conditions, the Proposal or otherwise agreed by Commsworld;
"Service Order"	means the order(s) for service placed under this agreement;
"Set Up Charges"	means that element of the Charges which consists of initial one off charges;
"SIP Trunking Services"	means a service by which Commsworld accepts voice over IP traffic from a Customer telephone system and terminates the voice calls onto the global PSTN;
"Service Specific Conditions"	means the conditions outlined in Schedule 1 of these terms and conditions;
"Standards of Service"	defines the service that the customer is entitled to receive;
"TCP"	means transmission control protocol;
"Units"	means standard 4.2cm Units of height in a Rack, and/or multiples thereof;
"UPS"	means in the context of a battery system, an uninterruptible power supply;
"we", "us" and "our"	means Commsworld and belonging to Commsworld as the case may be; and
"you" and "your"	means the Customer who orders the Service and belonging to the Customer as the case may be;
"VAT"	means value added tax chargeable at the prevailing rate for the time being in the United Kingdom and any tax which may be substituted for or levied in addition to it or any value added, sales, turnover or similar tax imposed in any other country;
"Voice Services"	means Commsworld's Hosted PBX Services and SIP Trunking Services, or where the context so permits, any one or more of them; and
"VPN"	means a virtual private network.

- 1.2 Agreement headings are only for ease of reference and shall not affect the construction or interpretation of this Agreement.
- 1.3 In case of conflict between these Conditions, the Service Order, the Schedules(s) and the Standards of Service, the foregoing order of precedence shall prevail.
- 1.4 Reference to any statute shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and shall include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder.
- 1.5 In this Agreement, unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing persons shall include un-incorporated associations and partnerships and any entity with legal standing.
- 1.6 Reference in this Agreement to a numbered Clause is a reference to a Clause herein of that number. And reference to a numbered Condition is to a Condition in the relevant Service Specific Conditions.

## **2. DURATION**

- 2.1 This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect until expiry of every Initial Period and thereafter shall renew automatically until terminated.
- 2.2 The Service shall come into effect on the Service Commencement Date, subject to you obtaining (at your own expense) all wayleaves, consents, approvals, servitudes and rights of way necessary for the provision of the Service to, together with installation of Equipment at the Customer Premises.

## **3 SERVICE PROVISION**

- 3.1 We shall provide the Service(s) with the reasonable skill and care of a competent telecommunications service provider and shall use all reasonable endeavours to provide the Service(s) by the Service Commencement Date in accordance with the Agreement.
- 3.2 We cannot guarantee the Service(s) against unauthorised interruption or interception by third parties or that Services shall be error free and/or uninterrupted. You agree that your use of the Service is at your sole risk.
- 3.3 We may obtain services from a Carrier(s) in order to supply the Services to you.
- 3.4 You accept that you may not be able to receive the Service due to certain technical restrictions. If such technical restrictions are discovered after the Agreement Date, Clause 4.7 shall apply.

## **4 CHARGES**

- 4.1 You shall pay, without any deduction, withholding or set-off whatsoever, to us the Charges.
- 4.2 Except in response to (i) a legal or other regulatory change or (ii) a change requested by you, Charges will be fixed for the relevant Initial Period. Following expiry of the Initial Period we shall be entitled to review the Charges. We shall give you 30 days prior written notice of any change to the Charges. Except in response to (i) a legal or other regulatory change or (ii) a change requested by you, if a proposed increase to any Charges is not acceptable to you, you may, prior to expiry of such notice from us, give us 30 days prior written notice to terminate this Agreement, specifying the reason for such termination being that the increased Charges were not acceptable. If you do not terminate within such period you shall be deemed to have accepted the Charges increase. If you do serve such notice, you will continue to pay the pre-existing Charges for the duration of the 30 day notice period resulting in termination of your Agreement.
- 4.3 Unless stated otherwise in your Agreement, Set Up Charges shall be invoiced on or shortly after the Service Commencement Date. Recurring Charges shall commence from the Service Commencement Date and shall be payable in advance as set out in the pricing and billing section of your Proposal. In circumstances where the Service is comprised of more than one element and the Charges are structured accordingly, the Charges in respect of any particular element will become payable in accordance with this Clause with effect from the Service Commencement Date for that particular element notwithstanding that other elements may not yet have reached their particular Service Commencement Date.
- 4.4 Commsworld shall issue or make available invoices to you at the intervals and in the manner set out in the Proposal. Unless agreed otherwise, payment shall be due within 14 days of issue of the invoice to you (the "Due Date").
- 4.5 Acting in good faith you shall notify us in writing of any disputed invoice amount within 10 days of the date of the invoice ("Disputed Charges") containing such Disputed Charges. If any undisputed amount remains unpaid after the Due Date, then we shall be entitled to charge interest (whether before or after judgment) at the annual rate of 4% above the base lending rate of The Royal Bank of Scotland plc for the time being until payment of such amount and all accrued interest in full.

- 4.6 You are required to pay the Charges as follows:
- 4.6.1 in respect of Set Up Charges or other Charges payable pursuant to the first invoice we raise, by electronic payment to our nominated bank account, as detailed in the invoice;
  - 4.6.2 in respect of all Recurring Charges, by direct debit with the frequency and on the date(s) referred to in the Proposal, to our nominated bank account, as detailed in the Direct Debit Instruction; or
  - 4.6.3 as otherwise agreed in writing by Commsworld.
- 4.7 If we are unable to fulfil the Proposal, we shall be entitled to cancel the Service without penalty immediately on giving you written notice.
- 4.8 Your Charges are subject to survey prior to Service installation. We shall endeavour to complete the survey within 26 Business Days of acceptance of your Proposal. If following such survey, we determine that excess construction charges are payable by you, we shall notify you of such excess construction charges and all work relative to provision of the Service shall be suspended without penalty until you provide us with written acceptance of such charges. In such circumstances, you may within 14 days of the date of our notice cancel the Service by written notice to us. If you have not provided us with written acceptance of such excess construction charges within a reasonable period of time as we specify, such period to be no less than 30 Business Days, we shall be entitled to (i) immediately cancel the Service and (ii) charge you for any abortive work done or costs we incurred in installing and provisioning the Services.
- 4.9 If we carry out work in response to a Service fault you reported and following such work we determine that (i) no Service fault is found and/or (ii) the Service fault was due to your act or omission, then we shall be entitled to charge you for any such work.
- 4.10 Commsworld reserve the right to impose abortive visit charges upon you.
- 4.11 If we carry out work in response to a Service fault you reported and following such work we determine that (i) no Service fault is found and/or (ii) the fault was due to your act or omission, then we shall be entitled to charge you for any such work.
- 4.12 Commsworld reserve the right to impose abortive visit charges upon you, where by way of example without limitation, you provide us with an incorrect address for attendance and where you do not agree or are otherwise unable to receive the Service at the time agreed between the Carrier, Commsworld and you.
- 4.13 We reserve the right to invoice you for any administration charges we incur as a result of you providing a materially incorrect or incomplete Proposal.
- 4.14 You are not entitled to any reduction to the Charges if you do not use all or any part of the Services.
- 4.15 All amounts payable by you are exclusive of VAT and you shall pay in addition any VAT applicable thereto.
- 4.16 Save in the case of demonstrable error, all Charges shall be calculated in accordance with data recorded or logged by, or on our behalf.
- 4.17 If at any time before or during this Agreement you fail to meet the standard of creditworthiness deemed acceptable, we shall be entitled to:
- 4.17.1 require you to make such regular instalment payments in advance on account of any future Charges; and/or
  - 4.17.2 impose such other measures on your right to use the Service as we shall reasonably deem necessary.

In the event that you do not act in accordance with this Clause 4.16, we shall be entitled to terminate this Agreement immediately.

## 5 CUSTOMER OBLIGATIONS

- 5.1 You shall maintain in force throughout this Agreement appropriate health and safety insurance to cover our employees working in Customer Premises, with a reputable insurance company and shall produce evidence of such to us on demand.
- 5.2 You shall be responsible for the repair and maintenance of Customer Equipment.
- 5.3 We reserve the right to disconnect any Customer Equipment in the event of it becoming faulty or it materially impairs the quality of any Service provided by Commsworld. In the event that we request disconnection, you shall timeously comply with such a request.
- 5.4 You shall ensure that the Services are not used:
  - 5.4.1 in a way that does not comply with the terms of this Agreement or any legislation, directions, codes or regulations relevant to your use of the Service(s) or any part thereof or that is in any way unlawful or fraudulent or to your knowledge has any unlawful or fraudulent purpose or effect;
  - 5.4.2 in any way that modifies, decompiles or reconfigures the Service or any Equipment (if relevant) or software or copy any documentation relating to the Service, without our prior written consent;
  - 5.4.3 to send a message or communication which is offensive, abusive, indecent, obscene or menacing;
  - 5.4.4 to cause annoyance, inconvenience or needless anxiety; and/or
  - 5.4.5 in breach of any reasonable or lawful instructions we provide from time to time.
- 5.5 You shall keep safe all Personal Identifiers allocated by us and shall not disclose these to third parties. You shall be held responsible for all use of the Service accessed via such Personal Identifiers regardless of whether the Service is used by you or by a third party. You shall notify us immediately if any unauthorised third party becomes aware of the Personal Identifiers. We shall be entitled to suspend user name and/or personal identifier access to the Service if at any time it considers that there has been or is likely to be a breach of security. We may treat any breach of this Agreement by any user as a breach by you.
- 5.6 Where Services are provided on a 24x7 basis and you have requested notification of service interruption out with Business Hours you shall provide Commsworld with a 24 hour contact telephone number. You acknowledge and agree that any notice given to you via such telephone contact number shall be deemed appropriate notice.
- 5.7 You shall provide Commsworld with a password unique to you to permit telephone call verification as set out in this Agreement. Furthermore, you agree to regularly change your telephone verification password (and inform us of the new password) and will do so at least every time that any of your employees, contractors or agents who have had access to such password leave your employment or service;
- 5.8 You shall be responsible for insuring against all loss of or damage to data stored on or transmitted using the Service or the Commsworld System.
- 5.9 You shall be responsible for adopting appropriate security measures for the protection of computer systems and we shall not be liable to you for any loss or damage that you suffer as a result of any virus or other hostile computer program being introduced into your computers or computer systems as a result of your use of the Service and/or the Commsworld System, unless such virus or hostile computer programme was introduced by Commsworld.
- 5.10 You are solely responsible for all paperwork and documentation in respect of, and payment of, customs duties, imports, levies, taxes or charges in respect of deliveries you arrange to be made to the premises and acknowledge that Commsworld will not arrange, and is not responsible for arranging, such deliveries or such payments.



## **6 SUPPLIER OBLIGATIONS**

- 6.1 the supplier obligations are:
- 6.1.1 to perform the delivery of the Services and any expected Service requested by you with reasonable care and skill (see also 3.1);
  - 6.1.2 that all Commsworld personnel who are associated with the delivery and operation of the services are appropriately qualified to deliver and operate the Services;
  - 6.1.3 to meet the Service Levels as more particularly set out in the appendices

## **7. CUSTOMER WARRANTIES**

- 7.1. To the extent that they are applicable to the Services, the Customer represents, warrants and undertakes to Commsworld that:
- 7.1.1 it will comply in its use of the Services and/or the Equipment (wherever such Equipment is located) with all applicable laws and regulatory requirements;
  - 7.1.2 it will comply timeously with its obligations under this Agreement, and exercise all due skill and care in doing so;
  - 7.1.3 it has all rights, consents, authority and capacity necessary to allow it to:
    - 7.1.3.1 enter this Agreement on the terms contained herein; and
    - 7.1.3.2 perform its obligations under this Agreement;
  - 7.1.4 by Commsworld providing the Services to the Customer, neither the Customer nor Commsworld is breaching the rights of any third party in or in relation to Commsworld Equipment, or any legal or regulatory restraints on such use;
  - 7.1.5 it will have responsibility for the Customer Equipment and will ensure that the Customer Equipment is, and will be for so long as it is located in the Licensed Space, maintained in good working order, in accordance with good industry practice, and without affecting the foregoing generality that it complies, and will comply, with all legislative or other legal requirements applicable to it; and
  - 7.1.6 it will ensure that the operation or condition of the Customer Premises will comply with any reasonable written requirements of Commsworld from time to time so that same do not adversely affect the correct functioning of Commsworld Equipment.

## **8 EQUIPMENT**

- 8.1 Except as expressly stated in this Agreement, Equipment shall remain our property and form part of the Commsworld System notwithstanding that it may be situated on or affixed to Customer Premises.
- 8.2 Notwithstanding Clause 8.1, you shall be responsible for all loss, damage or destruction to Equipment while situated on Customer Premises other than as a result of our act or omission. You will notify us immediately of such loss or damage. In particular (without prejudice to the generality of the foregoing) you undertake:
- 8.2.1 to keep Equipment at Customer Premises and not to move it;
  - 8.2.2 to comply with all instructions relating to the Equipment notified by us to you;
  - 8.2.3 not to cause Equipment to be repaired or otherwise maintained except by our authorised representative;
  - 8.2.4 not to cause any attachments other than those approved for connections in accordance with the General Conditions or as we otherwise approve in writing to be fitted to the Equipment; and
  - 8.2.5 not to attempt to sell, transfer, dispose of, let, mortgage or charge the Equipment or suffer any distress, seizure or execution to be levied against the Equipment or otherwise do

anything prejudicial to us or the owner's rights in the Equipment.

- 8.3 You shall at your own expense provide and maintain for the duration of this Agreement a suitable environment, accommodation, facilities and electrical power in accordance with the relevant installation standards and regulations. We shall not be responsible for any interruption or failure of the Service caused by a failure of such power supply.
- 8.4 We shall attempt to comply with your reasonable requests in respect of installation of the Equipment.
- 8.5 You shall refrain from altering, adjusting or interfering in any way with Equipment unless we have given written consent save in the case of emergency and provided that you advise us immediately thereafter of the emergency action taken and circumstances requiring it. You shall indemnify us against any loss we may incur due to such action.
- 8.6 We shall have the right to modify or replace Equipment or any part thereof provided that such modification or replacement is carried out at our expense and does not materially impair your Services.
- 8.7 You shall permit, or procure permission for Commsworld and our authorised representatives to have free and safe access to Customer Premises to inspect, install, repair, maintain, replace or remove Equipment and in order to provide the Services during this Agreement and for the purpose of removing the Equipment for 30 days following the Agreement's termination.
- 8.8. Where the use of the Services and/or any Equipment is the cause (in whole or in part), or Commsworld has reasonable grounds to believe that it is the cause, of any problem affecting the Commsworld System, the Services, or any other services being provided by Commsworld to a third party, Commsworld may suspend the provision of Services in relation to the affected part (including by disconnecting the Customer from the Commsworld Network) for so long as is necessary to determine whether the Customer's use of the Services and/or Equipment is the cause of any such problem, and/or disconnect or partially block (by means of a firewall or equivalent technology) the Services, until such time as you are able to provide evidence to Commsworld that the problem will no longer be in effect.
- 8.9. All IP addresses assigned to the Customer by Commsworld via RIPE NCC and any carriers remain the property of Commsworld.
- 8.10 Commsworld shall be entitled to require relocation of the Equipment within the Customer Premises on 30 days' written notice to the Customer.

## **9 INFORMATION AND CUSTOMER APPARATUS**

- 9.1 Upon request by us, you shall provide us with information about Customer Equipment and any other information we reasonably require to install Equipment and provide the Services. Where necessary, you shall provide us with relevant technical personnel to facilitate installation and maintenance of Equipment by us at the Customer Premises.
- 9.2 You shall at your own expense modify Customer Equipment in accordance with our instructions where necessary to enable us to provide the Services.
- 9.3 We accept no liability for any loss you may suffer as a result of your use or misuse of Customer Equipment or as a result of any faults in Customer Equipment. In particular, by way of example without limitation, we are not liable if you damage or incorrectly reconfigure any Customer Equipment which you purchased for use with the Service.
- 9.4 For the avoidance of doubt, if you do anything to the Customer Equipment including by way of example without limitation adjusting or altering it in any way following Service commencement there is a risk that such action will impact upon your ability to receive the Service. You shall be responsible for ensuring that no action is taken which impacts your ability to receive the Service. If such action does take place and you subsequently require us to re-configure and/or reconnect the Service in any way, then any reasonable costs which we incur in this regard shall be borne by you.

## **10 LIABILITY**

- 10.1 Commsworld's liability in contract, tort (or delict) or otherwise (including liability for negligence) under or in connection with this Agreement is limited:
- 10.1.1 in respect of damage caused by us to tangible property at the Customer Premises to £2,000,000 per claim or series of related claims; and
- 10.1.2 in relation to all other matters, to the lesser of (i) 125% of the price paid for the Services (excluding VAT or similar taxes) by you in relation to the 12 month period immediately preceding the date on which the event giving rise to the claim arose; or (ii) £100,000.
- 10.2 Nothing in this Agreement shall exclude or limit the liability of a party for death or personal injury arising as a result of that party's negligence or fraudulent misrepresentation.
- 10.3 Neither party shall be liable to the other in any circumstances for any loss of revenue, loss of profit, loss of confidentiality, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss including without prejudice to the generality of the foregoing loss or corruption of data transmitted over the Commsworld System.
- 10.4 Except as expressly set out in this Agreement, all warranties, conditions, undertakings or terms implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.
- 10.5 Where Service Credits are available, payments thereof under the Service Specific Conditions in full satisfaction of your respective claims and constitute your sole and exclusive remedy for any failure by Commsworld to achieve any specified Service Levels.
- 10.6 You shall indemnify and keep Commsworld indemnified against any or all claims and associated costs, damages or expenses made by any third party as a consequence of any act or omission by you in relation to this Agreement or your use of the Service.

## **11 FORCE MAJEURE**

- 11.1 Neither party shall be liable for any breach of this Agreement or delay in performance of its obligations (other than the obligation to pay) to the extent that such breach is caused by circumstances beyond that party's reasonable control including by way of example without limitation Acts of God, fire, lightning, explosion, war, act(s) of terrorism, disorder, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of local or central Government or other competent authorities. If either party is affected by circumstances beyond its reasonable control, it shall notify the other party and use reasonable endeavours to overcome the effects.
- 11.2 If any events detailed in Clause 11.1 continue for more than 90 days, either party may serve notice on the other terminating this Agreement without further liability.

## **12 BREACH OF AGREEMENT**

- 12.1 We shall investigate any suspected or alleged breach of this Agreement or suspected compromise to the Commsworld System or security. Without limitation, you expressly authorise us to use your personal data and any information which you provided us with in relation to this Agreement in connection with any such investigation, including by disclosing it to any third party whom we consider has a legitimate interest in any such investigation or its outcome. Personal data will not be disclosed to a third party, without seeking permission from you, such permission not to be unreasonably withheld.
- 12.2 If we decide that you have breached the Agreement, we will use reasonable endeavours to ensure that you are notified. PLEASE NOTE: in certain circumstances it may be necessary, due to the severity of the breach, to suspend or end the Service while details of the breach are investigated further. We reserve the right to take any action we deem appropriate and proportionate to the breach of this Agreement including by way of example without limitation suspending or terminating your account at our sole discretion without refund.

### 13 TERMINATION AND SUSPENSION

- 13.1 Without prejudice to the parties rights and remedies, either party may terminate this Agreement or any part thereof if:
- 13.1.1 the other party is in material breach of this Agreement (including any failure to pay any Charges) and (in the case of remediable breach) fails to remedy the breach within 28 days of receiving notice to that effect from the other party; or
  - 13.1.2 either party becomes insolvent or has a receiving order made against it which is not settled within 7 days or commences to be wound up (not being a members voluntary winding up for the purpose of a solvent reconstruction or amalgamation) or grants a trust deed on behalf of its creditors or any of them; or
  - 13.1.3 Commsworld's entitlement to provide electronic communications services and associated facilities is suspended or restricted to such an extent that it is not permitted to provide the Services; or
  - 13.1.4 the holder of a floating charge holder over the assets of the other party is entitled to appoint or has appointed an administrative receiver; or
  - 13.1.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - 13.1.6 any event occurs, or proceedings taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.1; or
  - 13.1.7 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.2 We may end this Agreement immediately upon written notice to you if:
- 13.2.1 it becomes unlawful for us or any Carrier supporting the Service to continue to provide the Service or the Company or a Carrier is required to cease the Service by a competent regulatory authority; or
  - 13.2.2 a Carrier ceases to provide services to us for whatever reason or materially changes the terms of provision thereof to us beyond our reasonable control so much so that we are unable to provide your Services;
  - 13.2.3 it transpires following the Agreement Date that, for any reason outwith our control, the Services will not be able to be provided to you. In the event of termination in accordance with this Clause 13.2.3, we shall repay to you any Charges you paid in advance for the Services and shall provide such assistance as you may reasonably require to facilitate a smooth transition to a new supplier of the Services;
  - 13.2.4 if there is a change of control of the Customer (as defined in Section 574 of the Capital Allowances Act 2001).
- 13.3 If this Agreement is terminated prior to the Service Commencement Date and/or prior to the end of the Initial Period, for any reason, other than (i) our fault or negligence or (ii) by you pursuant to Clauses 4.2, 4.7, 14.1 and/or 20.4 you shall forthwith pay us:
- 13.3.1 all arrears of Charges as at the date of termination; and
  - 13.3.2 all other Charges (including without limitation any supplementary charges pursuant to Clause 4.7) payable under the Agreement (less any Charges you previously paid in respect of a period falling after the date of termination) for the remainder of the relevant Initial Period.
- 13.4 Except in the case of termination of this Agreement, if any Service provided under this Agreement is terminated prior to the end of the relevant Initial Period for any reason, other than (i) our fault or negligence or (ii) by you pursuant to Clauses 4.2, 4.7 and/or 20.4 you shall forthwith pay to us:

- 13.4.1 all arrears of Charges in respect of such terminated Service at the date of termination;
- 13.4.2 all other Charges for the Service (including without limitation any supplementary charges pursuant to Clause 4.7) payable under the Agreement (less any Charges you previously paid in respect of a period falling after the date of termination) for the remainder of the relevant Initial Period or Renewal Period.
- 13.5 Not used.
- 13.6 You shall continue to be liable to pay the Charges during such suspension if such suspension is pursuant to your default.
- 13.7 Not Used.
- 13.8 Subject to Clauses 13.3 and 13.4, either party may terminate this Agreement by giving prior written notice to the other party (such notice must state the Agreement to which the notice relates and include the Agreement reference number) in accordance with the following timescales:
- 13.8.1 in relation to any per-Unit Co-Location Services, EFM, Leased Line and Fibre Ethernet Services, ADSL Services and any other Service not referred to in Clause 13.8 at least 30 days; and
- 13.8.2 in relation to Co-Location Services in the case of Floor Space, RSU's, or private rack systems (half and quarter sized), Dedicated Hosting Services and managed application services at least 90 days.
- 13.9 Promptly upon termination or expiry of the Agreement and following removal by Commsworld to a suitable collection point, and where appropriate, you shall at your own cost remove the Customer Equipment from the Co-location Facility. Such removal shall take place at a time to be agreed with Commsworld (subject to any lien which Commsworld may have over the Customer Equipment). Should you fail to remove the Customer Equipment from the Co-location Facility within 30 days from the date of expiry or termination or agreed time of removal, we shall be entitled to remove all data stored on the Customer Equipment, disconnect, remove and sell the Customer Equipment, and account to you for the proceeds of sale less any sums owing to Commsworld pursuant to this Contract. Commsworld is not responsible for any loss incurred due wholly or in part to the invocation of this Clause.
- 13.10 Following expiry or termination of the Agreement, Commsworld will be entitled to access all Equipment and data stored on that Equipment and to disconnect and, remove the same. You are obliged to have ensured any and all data is recovered or removed from the Equipment on expiry or termination of the Agreement. Commsworld shall not be held responsible for any loss incurred due wholly or in part to your failure to do this.
- 13.11 Within 5 Business Days of termination of this Agreement we will remove all data stored on all other Equipment (not being Customer Equipment), and will disconnect and remove it from service. You shall ensure any and all data is recovered or removed from such Equipment prior to the termination of this Agreement, and Commsworld is not responsible for any loss incurred due wholly or in part to your failure so to act.

## 14 CANCELLATION

- 14.1 The Agreement may be cancelled within 7 days of the Agreement Date and/or any particular Service may be cancelled within 7 days of acceptance by us of the applicable Proposal by the serving of written notice;
- 14.1.1 by you subject to our entitlement to charge you for any abortive work done or costs we have incurred in installing and provisioning your Services;
- 14.1.2 by us pursuant to Clause 11.

## 15 CONFIDENTIAL INFORMATION

- 15.1 Each party shall keep confidential and shall not, without the other party's prior written consent, copy or disclose to any third party any Confidential Information acquired from the other party or

otherwise made available to such party pursuant to this Agreement and such Confidential Information shall be used only for the purposes of this Agreement, provided however that nothing shall prevent either party from disclosing any Confidential Information which:

15.1.1 it possesses prior to receiving it from the other party;

15.1.2 is or becomes public knowledge other than as a result of breach of this Clause 15;

15.1.3 is received independently from a third party with the right to disclose; and/or

15.1.4 is required to be disclosed by law.

15.2 Each party shall be entitled to disclose the Confidential Information to such of its employees, agents, directors or other authorised representatives who have a need to know such Confidential Information for the purposes of this Agreement. In such circumstances, each party shall procure that such persons are subject to confidentiality undertakings no less onerous than those in Clause 15.1 and shall be responsible for every party to whom it makes such disclosure.

15.3 Each party shall obtain the prior written approval of the other, such approval not to be unreasonably withheld or delayed in relation to the content of any articles or other information releases relating to this Agreement.

15.4 Notwithstanding the foregoing provisions of Clause 15, where Commsworld is the recipient of Confidential Information, you acknowledge and accept that there are circumstances in which such Confidential Information (including Personal Data) may need to be disclosed to third parties as follows:

15.4.1 your name, address, telephone and fax numbers together with email address(es) and assigned IP Addresses may be released to the RIPE NCC to ensure that both parties fulfil their obligations under prevailing RIPE.

## **16 DATA PROTECTION**

16.1 Upon agreement, Commsworld may retain your personal data and you authorise us to use your personal data for the following purposes:

16.1.1 providing the Service to you;

16.1.2 keeping a record for a reasonable period after your Service terminates;

16.1.3 operation and enforcement of your Agreement;

16.1.4 carrying out technical maintenance and maintaining the quality and integrity of the Service and the Commsworld System;

16.1.5 providing you with information about other services we offer, subject to your right to opt out of receiving such information;

16.1.6 transferring it to another company in the event Commsworld is acquired; and

16.1.7 legal compliance.

16.2 Both parties shall comply with applicable data protection legislation with respect to any personal data supplied in connection with the Agreement. Where applicable, you shall inform your employees of the processing of personal data by us and shall ensure such employees have consented to such processing. You warrant that all such personal data are accurate and complete.

16.3 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

16.4 Commsworld will be the 'Controller' of the personal data you provide to us. We only collect basic personal data about you which may include information about your location at the time that you supplied this to us or any special types of information except where you provide this to us so that we can accommodate your additional requests. It does however include your name, address and email as a minimum.

16.5 Commsworld need to know your basic personal data in order to provide you with billing invoices and any future event booking (e.g. faults enquiry's) and to let you know if we need to make any

changes to your services We will not collect any personal data from you that we do not need in order to provide and oversee this service to you.

- 16.6 All the personal data Commsworld process is processed by our staff for the purposes of IT hosting and maintenance this information is located on servers. No 3rd parties have access to your personal data unless the law allows them to do so. We have a Data Protection regime in place to oversee the effective and secure processing of your personal data. More information on this framework can be requested at any time in our data protection policy and our privacy policy
- 16.7 Commsworld are required under UK tax law to keep your basic personal data (name, address, contact details) for a minimum of 6 years after which time it will be destroyed. Any information we use for marketing purposes will be kept with us until you notify us that you no longer wish to receive this information.
- 16.8 Commsworld will use your name and email address to inform you of our future offers products and services unless you specify otherwise, this information is not shared with third parties and you can unsubscribe at any time via phone, email or our website.
- 16.9 If at any point you believe the information we process on you is incorrect you can see it and update it by request to see this information and have it corrected or deleted by contacting us. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Compliance Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your data not in accordance with the law you can complain to the Information Commissioner's Office (ICO).

## **17 NOTICES**

- 17.1 All notices required to be given by Commsworld to you shall be deemed sufficiently given when forwarded by prepaid registered mail, by facsimile, by e-mail or hand delivered to your registered address or other address or facsimile number notified by you to us.
- 17.2 All notices required to be given by you shall be deemed sufficiently given when forwarded by prepaid registered mail, by facsimile or hand delivered to Commsworld House, Peffer Place, Edinburgh, EH16 4BB.
- 17.3 Notices shall be deemed to have been received 3 Business Days after mailing if forwarded by mail, and the following Business Day if forwarded by facsimile, e-mail or hand-delivered provided sufficient proof can be provided of issue to the correct details.

## **18 ASSIGNMENT**

- 18.1 Commsworld may assign or sub-contract the whole or any part of its rights and obligations under this Agreement subject to your prior written consent, such consent not to be unreasonably withheld.
- 18.2 You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the Agreement or any rights or obligations therein without our prior written consent, such consent not to be unreasonably withheld.

## **19 PROPRIETARY RIGHTS**

- 19.1 All title, interests and rights (including IPRs) in the Service remain with Commsworld and/or our suppliers irrespective of whether in existence prior to this Agreement or created during the Agreement. You acknowledge such title, interest and rights and you shall not take any action to jeopardise, limit or interfere in any manner with such title, interests or rights with respect to the Service including, but not limited to, using our trademarks or tradename.
- 19.2 Commsworld grants you a license to use the title, interests and rights referred to in Clause 19.1 free of charge on a non-exclusive worldwide basis to such extent as is necessary to enable your use of the Services in accordance with this Agreement.

## **ENTIRE AGREEMENT AND RIGHT TO AMEND**

- 20.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and, except in relation to fraudulent misrepresentation(s), supersedes all other agreements and representations made by either party whether oral or written.
- 20.2 Each party acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this Agreement. The only remedy available for breach of the warranties shall be for breach of contract under the Agreement. Nothing in this sub-clause shall limit or exclude any liability for fraud.
- 20.3 Commsworld reserves the right to amend this Agreement. If we are going to make an amendment, we will provide you with at least 60 days prior notice thereof.
- 20.4 If Commsworld exercise the right under Clause 20.3, you shall be entitled to terminate this Agreement by giving us at least 30 days notice, provided that the amendment is (a) to your detriment, and (b) not made in response to a legal or regulatory change. Commsworld must receive your notice to terminate before the amendment takes effect. If you do not exercise this right to terminate, you will be deemed to have accepted the amendment.
- 20.5 If you ask Commsworld to amend the Agreement, the Agreement will be amended 60 days from the date on which you requested that the Agreement be amended. Please note, in such circumstances, a new Initial Period may apply in respect of each additional or changed Service. For the avoidance of doubt, where a new minimum period in respect of new, additional or changed Services will operate beyond expiry of the Initial Period of the Agreement, the Initial Period of the Agreement will automatically be extended so as to expire at the same point as any such new minimum period.

## **LAW AND ARBITRATION**

- 21.1 Except in circumstances where Clause 21.2 applies, the Agreement shall be governed by and construed in accordance with Scottish law and the parties agree to submit to the non-exclusive jurisdiction of the Scottish Courts.
- 21.2 Where the Customer is a Scottish registered company and/or has its principal place of business in Scotland, the Agreement shall be governed by Scottish law and the parties agree to submit to the non-exclusive jurisdiction of the Scottish Courts.
- 21.3 The parties shall use reasonable endeavours to resolve any dispute arising under this Agreement by direct negotiations between the parties. If such negotiations fail to resolve the dispute within 14 days, the parties will attempt to resolve the matter through the Alternative Dispute Resolution (“ADR”) procedure as recommended to the parties by the Centre For Dispute Resolution. If the matter has not been resolved by an ADR procedure within 30 days, or if either party will not participate in an ADR procedure within such 30 day period, the dispute shall be referred to litigation in accordance with Clause 21.1 or 21.2 (as applicable). Notwithstanding the foregoing, either party may seek injunctive relief in any court of competent jurisdiction if the other party is in breach of any term of the Agreement.

## **22 RIGHTS OF THIRD PARTIES**

- 22.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof. This does not affect any third party right or remedy which exists or is otherwise available.



## **23 GENERAL**

- 23.1 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 23.2 The rights and remedies provided by this Agreement are exclusive and not cumulative and exclude all other rights and remedies (whether express or implied) provided by common law including negligence claims in tort or delict or statute in respect of the Agreement subject matter.
- 23.3 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 23.4 In the event that either party agrees to waive a breach of this Agreement by the other party, that waiver is limited to that particular breach.
- 23.5 The termination or expiry of this Agreement shall be without prejudice to the rights of either party which have accrued prior to termination or expiry. Clauses expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.
- 23.6 Nothing in the Agreement shall create or be deemed to create a joint venture, partnership and/or the relationship of employer and employee between the parties.

## Schedule 1: Service Specific Conditions

Subject to the Services specified in your Proposal, your Agreement will also be subject to the conditions below which are identified as applicable to your Services.

Unless stated otherwise, terms defined in the Conditions shall have the same meaning when used in the Service Specific Conditions.

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### A. CO-LOCATION SERVICES

#### 1. Right to use Licensed Space

- 1.1 Subject to the Proposal, Commsworld grants you the right during the Agreement to:
  - 1.1.1. locate the Customer Equipment in the Licensed Space, and for these purposes to install such Customer Equipment under Commsworld's supervision, or to have us install it subject to your payment of our installation charges calculated in accordance with the rates set out in the Proposal or as communicated by Commsworld to you from time to time;
  - 1.1.2. access the Customer Equipment in the Licensed Space in accordance with the Agreement together with the security and access policies and procedures, which we can provide you with on request, at the Co-Location Facility, the operating environment within which the Customer Equipment must function and the minimum standards of maintenance and repair that the Customer Equipment must be kept in, and subject to the following:
    - 1.1.2.1. if you have Licensed Space of 1 or more RSU's, Half or Quarter Rack systems, then unrestricted and unescorted access is provided on a 24x7 basis; and
    - 1.1.2.2. if Licensed Space is provided in Unit's, then only escorted access is available during Business Hours.
- 1.2. You may have up to 2 hours escorted access in any 30 day period free of supervision charges. All other escorted access will be charged by Commsworld at our standard hourly rates, as set out in the Proposal or as communicated to you from time to time.
- 1.3. Following installation of the Customer Equipment in accordance with Condition 1.1.1, unless you instruct us not to, we will connect the Customer Equipment to the internet, via the Commsworld System, unless otherwise requested not to. You are not permitted to make such connection.
- 1.4. We will utilise 1 Unit of any Licensed Space (for Racks, Half Rack or Quarter Rack customers) for the provision of a single Cat5e patch panel. Internal cabinet space (in the vertical axis) will also be used for provision of power bars.
- 1.5. Licensed Space taken on a floor space basis does not include the supply of power, which will be provided by Commsworld on the basis set out in the Proposal or on terms otherwise agreed by the parties in writing.
- 1.6. Unless Commsworld and the Customer have agreed different requirements in the Proposal, full RSU's are provided with twin 16A fused power supplies and up to 8A total sustained power utilisation (power allowance) as standard on power bars with UK-style 3-pin 13A sockets. Half Racks with twin 8A fused supplies (with 4A total sustained usage), and Quarter Racks with twin 4A supplies (with 2A total sustained usage). Additional power required beyond the Power Allowance referred to in the Proposal may be provided by Commsworld subject to separate agreement by the parties.
- 1.7. For Licensed Space taken on a per-Unit basis, Customer Equipment may only be fitted to the front mounting rails of the relevant rack system provided, and power is provided on the basis that the Customer Equipment power supplies are rated to no more than 400W (single or twin PSU) per Unit of space taken.
- 1.8. For Licensed Space taken in Quarter, Half and Full RSU's, Commsworld cannot take responsibility for the safety and stability of power and networking cables where you choose to have the Customer Equipment fitted to the rear mounting rails of any rack system provided.

## **2. Customer Equipment**

- 2.1. You shall work with Commsworld to ensure that adequate ventilation space is provided within the Licensed Space for dissipation of heat generated by the Customer Equipment in accordance with good industry practice.

## **3. Commsworld's obligations in respect of the licensed space**

- 3.1. Commsworld will provide you with the following:
  - 3.1.1. dual power, protected by in-line UPS battery systems and on-site generator;
  - 3.1.2. IP transit (bandwidth) measured on a 95th percentile basis, whereby each Megabit of data transferred per calendar month is billed at the rate as set out in the Proposal. Other network services may also be provided as required by you under separate terms, including but not exclusively Copper Ethernet, X25, X21/G703 leased lines, Fibre Ethernet, Voice Services over IP and PRI/SS7 circuit switched services;
  - 3.1.3. such additional services as the parties agree in writing that Commsworld will provide from time to time; and
  - 3.1.4. monitoring of the IP network interface to the Customer Equipment if we are provided with suitable access through firewalls or other devices. The Service Levels, if applicable, provided for IP transit or other network services will only apply in the event that suitable monitoring is possible. By firewalling our monitoring tools, you acknowledge and agree that the relevant Service Levels do not apply.
- 3.2. Commsworld will provide you with an appropriate physical environment for the Customer Equipment including air conditioning and humidity control.
- 3.3. Commsworld will provide you with a 24x7 secure environment with a fully manned site, perimeter vibration sensors, CCTV, proximity card access control system, fire suppression system (technical details and choice of fire suppression materials will vary according to your choice of datacentre).
- 3.4. Commsworld will use reasonable endeavours to deliver these Co-location Services within 2 Business Days of receipt of a signed copy of the Agreement and payment of the relevant pro-forma invoices in accordance with Clause 4.
- 3.5. You acknowledge and agree that while you will have the exclusive right, as applicable to the Services you receive, to locate the Customer Equipment in the Licensed Space and/or to use the CPE in the Co-location Facility and/or to use the connection for so long as the Agreement is in force, we are entitled to use all other parts of the Co-location Facility at our sole discretion, provided always that this does not interfere with, or adversely affect, your use of the Customer Equipment or your ability to access same.
- 3.6. Commsworld shall allow your representatives to access the Co-Location Facility in accordance with the security and access policies referred to in 1.1.2 save that we may refuse access to the data centre in the case of co-location services in the event of emergency or if we have given you prior notice that such access is denied.

## **4. Customer obligations**

- 4.1. You warrant, represent and undertake that you:
  - 4.1.1. will abide by the AUP at all times;
  - 4.1.2. will not use any part of the Co-location Facilities for any purpose other than for the location of the Equipment;
  - 4.1.3. will keep the Rack(s) and/or the Cage and all fixtures and fittings therein in good condition and on expiry or termination of the Agreement return the same to Commsworld in their original condition, fair wear and tear excepted;
  - 4.1.4. will not exceed the specified maximum limit of electrical power usage to each Commsworld Rack as specified in Condition 1.7 above nor allow or do anything which would cause a

- power interruption at the Co-Location Facility or to the Services;
- 4.1.5. will ensure that the operation or condition of the Customer Equipment will comply with any reasonable written requirements of Commsworld from time to time so that the Customer Equipment does not adversely affect any other Equipment located at the Co-location Facility or the use of the Co-location Facility by Commsworld or any third party;
  - 4.1.6. will ensure that the operation of the Dedicated Server and Customer Equipment will comply with any reasonable written requirements of Commsworld so that same do not adversely affect any other equipment located at the Co-Location Facility or the use of the Co-Location Facility, and the Commsworld System by Commsworld or any third party;
  - 4.1.7. will not do anything that may:
    - 4.1.7.1. compromise the security of the Co-Location Facility;
    - 4.1.7.2. be dangerous or cause any nuisance, inconvenience or other disturbance to others (including others Customers of Commsworld) at the Co-Location Facility; or
    - 4.1.7.3. place Commsworld in breach of any covenants relating to the Co-Location Facility or insurance Clauses as notified to it by Commsworld from time to time;
  - 4.1.8. have all rights and consents necessary to allow it to:
    - 4.1.8.1. locate the Customer Equipment in the Licensed Space;
    - 4.1.8.2. locate the Equipment in the Customer Premises;
    - 4.1.8.3. have the Connection and associated CPEs installed at the Customer Premises;
    - 4.1.8.4. use the Dedicated Server and Network Equipment in the Co-location Facility.

## 5. Service Levels

The following Service Levels apply to the Services described within this section, subject to the other provisions of these Conditions which may limit or reduce them. The remedies specified in this Section represent your exclusive remedy for Commsworld's failure to achieve the Service Levels.

- 5.1. Commsworld shall ensure that all Co-Location Services are supported by the following:
  - 5.1.1. we will notify you as soon as reasonably practicable (using either the 24 hour telephone number you provided on the Commsworld's security access procedure form or the online portal ticket system) in the event that any of the following events have occurred and have affected the Co-Location Services:
    - 5.1.1.1. any disaster or act of God including (but not limited to) explosions, fire, or flood;
    - 5.1.1.2. theft or burglary;
    - 5.1.1.3. power failure;
    - 5.1.1.4. cooling failure.
- 5.2. Any faults or problems you detect must be reported immediately (and in any event within 24 hours) to the Commsworld Network Operations Centre ("NOC") using the online portal ticket system or (in the event that it is not working) using a telephone number provided to you. The fault or problem will then be logged by the NOC and you will receive a reference number.
- 5.3. In the event that a problem concerning one of the Co-Location Services ("Event") is either detected by our monitoring systems or reported by you in accordance with this Condition 5, we shall use our best endeavours to repair and restore the affected Service within the response times outlined in our Customer Service Plan
- 5.4. The response times will not apply where:
  - 5.4.1 an Event is caused by any act or omission of the Customer, its employees, agents, or subcontractors;

- 5.4.2 an Event is caused by the Customer's equipment;
- 5.4.3 an Event is caused by a Force Majeure event;
- 5.4.4 you do not report an Event in accordance with the procedures set out in Condition 5.2 above;

## **6. Emergency maintenance**

- 6.1. Where we consider (at our sole discretion) that it is necessary to carry out emergency maintenance activities that will or may reasonably be expected to affect your Services, we shall notify you at least 48 hours in advance of the commencement of the works detailing the nature of the work to be carried out and the timetable for completion thereof. These works will be carried out in accordance with Commsworld's standard procedures which are available to you upon request.

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## **B. ETHERNET FIRST MILE (EFM) SERVICES**

### **1. Right to use the Connection**

- 1.1. Subject to the Proposal, Commsworld grant you the right during the Agreement to use the Connection for access to the global internet via the Commsworld System, including the use of Equipment installed at the Customer Premises.
- 1.2. You acknowledge that Commsworld will require the supply of appropriate space at the Customer Premises for the location of Equipment, including an appropriate, reliable power supply, as well as a suitable environmental location which meets our requirements.

### **2. Customer's obligations in respect of the connection**

- 2.1. You agree to supply the exact installation address and specific location (referencing room and location within that room where that level of specificity is reasonably required by Commsworld) for the Equipment. Any change to these details subsequent to the Agreement Date may result in additional fees at Commsworld's prevailing rates from time to time for which you will be liable.
- 2.2. Should the installation address not be in a suitable condition at the time of installation as required by Commsworld and any relevant third parties, or unavailable for access by said parties at the time of installation, then you may be liable for additional site visits and installation costs.
- 2.3. The line speeds achieved may vary dependent on the distance of the Customer Premises from the local telephone exchange, and/or the quality of the copper circuit and other connections both along the route from the exchange to the Customer Premises, and also within such premises. This means that your broadband connection may not achieve the line speeds that have been contracted for, which are a maximum theoretical data rate.

### **3. Commsworld's obligations in respect of the Connection**

- 3.1. We will provide you with the following Equipment and Services:
  - 3.1.1. the appropriate circuit from the Customer Premises with termination as appropriate, which may be supplied via any Carrier; and
  - 3.1.2. Equipment which will allow use of the Connection with any existing or proposed Customer network, which will remain at all times the property of Commsworld and/or any third party involved in the provision of the Connection; and
  - 3.1.3. IP transit (bandwidth) is provided at line speeds of up to a theoretical maximum dependent on line distance from the local telephone exchange to which the Customer premises are connected, and the quality of the physical copper circuits installed to these premises.

3.1.3.1. technical support services via telephone and email on a 24x7 basis for any and all issues related to the provision of the Connection and related services;

3.1.3.2. Commsworld will monitor the IP network interface to the Customer Equipment if provided with suitable access through firewalls or other devices. The Service Levels provided for IP transit or other network services as described may only be upheld in the event that suitable monitoring is possible. By firewalling Commsworld monitoring tools, you relinquish your rights to the relevant Service Levels.

3.2. Commsworld will use reasonable endeavours to deliver the Connection within 30 Business Days of receipt of the signed Proposal together with payment of any relevant pro-forma invoices in accordance with Clause 4.

#### **4. Service Level**

4.1. If there is any loss of connectivity to the Commsworld System and/or any Carrier network via the Connection, and/or loss of connection to the Internet, except in the case of local power failure, flood or fire at the Customer Premises, the following Service Levels will apply. We will respond to you within 30 minutes of the registration of such a fault, and will use all reasonable endeavours to rectify such fault.

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### **C. LEASED LINE AND FIBRE ETHERNET SERVICES**

#### **1. Right to use the Connection**

1.1. Subject to the Proposal, Commsworld grants to you the right during the Agreement to use the Connection for access to the global internet via the Commsworld System, including the use of Equipment installed at the Customer Premises.

1.2. Commsworld will require the supply of appropriate space at the Customer Premises for the location of Equipment, including an appropriate, reliable power supply, as well as a location giving suitable environmental conditions which meet our requirements.

#### **2. Customer's obligations in respect of the Connection**

2.1. You warrant and undertake to Commsworld that:

2.1.1. the Equipment and other associated components of the Connection at the Customer Premises are, and will be for so long as this Agreement is in effect, kept in a suitable location and treated with due care, in accordance with good industry practice and the terms of the Agreement; and

2.1.2. you will ensure that the use of the Connection will comply with any reasonable written requirements notified by Commsworld so that same do not adversely affect any other Connections or the use of the Commsworld System by Commsworld or any third party.

2.2. The Customer will supply the exact installation address and specific location (referencing room and location within that room where that level of specificity is reasonably required by Commsworld) for the Equipment. Any change to these details subsequent to the Agreement Date may result in additional fees at Commsworld's prevailing rates from time to time for which you will be liable.

2.3. The Customer should ensure that the installation address is in a suitable condition at the time of installation as required by Commsworld and any relevant third parties, and available for access by said parties at the time of installation, if not then you may be liable for additional site visits and installation costs;

#### **3. Commsworld's obligations in respect of the Connection**

3.1. Commsworld will provide you with the following services for the Charges:

- 3.1.1. the appropriate circuit from the Customer Premises with either X21, G.703 or Ethernet termination as appropriate, which may be supplied by any Carrier;
- 3.1.2. Equipment to allow use of the Connection with any existing or proposed Customer network. Such Equipment will remain at all times the property of Commsworld and/or any Carrier involved in the provision of the Connection;
- 3.1.3. IP transit (bandwidth) is provided either on a flexible basis, capped and billed at the agreed contracted (committed) rate per Mb (Megabits) per second, or on a burstable basis, where bandwidth is charged in GB (Gigabytes) transferred per calendar month all as set out in the Proposal (including where Customer has not asked for this in advance). This burstable bandwidth will be billed at the agreed pro-rata value for the additional usage. You will have access to usage graphs via a web interface and may monitor usage throughout the Agreement. Commsworld shall be entitled to charge the Customer on a burstable basis for additional bandwidth supplied to the Customer at its request beyond that contracted on a flexible basis, where this additional bandwidth was not agreed with Commsworld beforehand. The Customer may also request Commsworld at any time to cap the bandwidth usage to the agreed rate. This provision is tied to bandwidth pricing table in the Proposal;
- 3.1.4. technical support services via telephone and email on a 24x7 basis for any and all issues related to the provision of the Connection and related services;
- 3.1.5. Commsworld will monitor the IP network interface to the Customer Equipment if Commsworld is provided with suitable access through firewalls or other devices. The Service Levels may only be upheld in the event that suitable monitoring is possible. By firewalling Commsworld monitoring tools, you relinquish your rights to the relevant Service Levels.

#### **4. Service Level**

- 4.1. If there is any loss of connectivity to the Commsworld System via the Connection, and/or loss of connection to the internet, except in the case of local power failure, flood or fire at the Customer Premises, the following Service Levels will apply. We will respond to you within 30 minutes of the registration of such a fault and use all reasonable endeavours to rectify such fault.

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#### **D. MANAGED ROUTER / FIREWALL SERVICES**

##### **1. Right to use Managed Router or Firewall**

- 1.1. Subject to the Proposal, Commsworld grants to the Customer the right during the Agreement to:
  - 1.1.1 locate the Equipment in the Customer Premises, and for these purposes to have it installed by Commsworld's engineers (or other parties who may from time to time be contracted by Commsworld); and
  - 1.1.2 to use the Equipment to provide routed IP, firewall or VPN Services as detailed within the Proposal.
- 1.2. Following installation of the Equipment, Commsworld will connect the Customer Equipment to the Internet, via the Commsworld System unless requested not to.
- 1.3. Supply of a single 13A rated socket is the responsibility of the Customer. If power outage at the Customer Premises is the cause of router failure and the Customer has been informed, Commsworld reserve the right to disable monitoring for that router until informed that local power has been restored. UPS protection of the router is not provided by Commsworld, and, if required, is your responsibility.
- 1.4. Should the installation address not be in a suitable condition at the time of installation as required by Commsworld and any relevant third parties or unavailable for access by said parties at the time

of installation, then you may be liable to additional Customer Premises visits and installation costs.

## **2. Customer Premises**

- 2.1. In the event that backup ISDN or leased line services are required by the Customer, the Customer agrees to procure an appropriate and relevant ISDN or leased line service in time for installation, configuration and testing of the Equipment to deliver Services under the Agreement, unless it has otherwise been agreed that Commsworld will do so on your behalf. Under both circumstances, and for the avoidance of doubt, you will be responsible for any and all line rental and/or call charges if and when incurred.

## **3. Commsworld's obligations in respect of the managed router/ firewall**

- 3.1 Commsworld will provide the Customer with the following Equipment and Services:

3.1.1 the hardware router or Firewall device as set out in the Proposal;

3.1.2. appropriate cables and connectors to make use of the router with the relevant internet services we provide to you;

3.1.3 configuration on installation and changes, advice and support of that configuration for the duration of the Agreement. The Customer may request in writing up to 4 changes to the configuration per month;

3.1.4 the timely provision and installation of relevant firmware or software as provided by the vendor of the relevant hardware where required for security or performance purposes in accordance with Good Industry Practice; and

3.1.6 Commsworld will monitor the IP network interface to the Equipment if provided with suitable access through the Equipment, additional firewalls or other devices. The Service Levels provided for IP transit or other network services may only be upheld in the event that suitable monitoring is possible. By firewalling Commsworld monitoring tools, you relinquish your rights to the relevant Service Levels.

## **4. Service Levels**

- 4.1 Engineer response time on notification of faults by the Customer or directly to the Supplier telemetry systems will be 30 minutes. Engineering support and/or configuration work will be done remotely alongside vendor support engineers until such time as the fault is identified as requiring an on-site intervention. At that stage, the Supplier and the vendor will ensure that on-site engineering support is available within 4 hours on a 24x7 basis, assuming Customer Premises access is available at that time. In the event that Service cannot be restored, the hardware will be replaced and reconfigured to the last recorded configuration in a timely fashion.

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## **E. VIRTUAL WEB HOSTING, DATABASES, DOMAINS, & SSL CERTIFICATES**

### **1. Right to use virtual web hosting, databases, domains, & SSL certificates**

- 1.1 Subject to the Proposal, Commsworld grants you the right during the Agreement to use the Hosting & other Services.

### **2. Our obligations in respect of the web hosting, databases, domains, & ssl certificates are as detailed below:**

2.1 Virtual Web Hosting services provide for a quota of 2GB storage and 1GB of monthly data transfer (bandwidth) from Commsworld's virtual hosting platform.

2.2 Where the Customer data loaded up to the Web hosting platforms is kept on shared storage platforms, Commsworld will ensure that it is replicated and backed up regularly in accordance with



good industry practice.

- 2.3. Domain and SSL certificate registration will be managed by Commsworld on request by the Customer, and billed at the prevailing rate based on the country code of the domain, and the conditions associated with use of that domain may vary according to the relevant Top Level Domain registrar.
- 2.4. Commsworld is responsible for ensuring that the Domain and SSL certificate details match those provided by the Customer. Commsworld will liaise with the Customer in the event that the details are inadequate or in any way inappropriate for the registration of Domain and SSL certificates.
- 2.5. All Virtual Web Hosting, Database, Domain and SSL Certificate hosting will be provided in line with good industry practice.
- 2.6. Technical and Customer support will be provided on a 24x7 basis, via telephone or email, details of which are published on the Commsworld website.

### **3. Customer obligations**

- 3.1. The Customer warrants that it has:
  - 3.1.1 any and all legal rights which are required to use the names, commercial or technical details associated with the registered Domains or SSL certificates; and
  - 3.1.2 any and all rights required for any material hosted & hence published on the Commsworld Virtual Web & Database Hosting platform.
- 3.3. Use of the Virtual Web Hosting platform is provided subject to the AUP.

### **4. Service Level**

- 4.1. If any loss of power, loss of connection to the Supplier Network, and/or loss of connection to the internet, firmware or hardware fault affects the Dedicated Server and/or Network Equipment whilst it is located in the Licensed Space, the following Service Levels will apply. We will respond to you within 30 minutes of the registration of such a fault, and we will use all reasonable endeavours to rectify such fault (and restore full service to the Licensed Space) within 4 hours of such registration.
- 4.2. The timescale for restoration of faults referred to in the Service Levels will not include the time taken to rebuild RAID arrays or recover software, data and/or configuration from tape or other backup media.

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## **F. VOICE SERVICES**

### **1. Right to use the Services**

- 1.1. Subject to the Proposal, Commsworld grants to the Customer during the Agreement the right to use the:
  - 1.1.1 Equipment with the Hosted PBX Services. Such Equipment shall be located in the Customer Premises, and for these purposes will be installed by Commsworld's engineers (or other parties who may from time to time be contracted by Commsworld); and/or
  - 1.1.2 SIP Trunking Services via the Customer designated Internet connection\*; and/or
  - 1.1.3. the Equipment with the IVR Services\*

\*The Customer acknowledges that Commsworld does not guarantee the quality of service if the access product used is not a Commsworld provided service.

- 1.2. Following installation of the Equipment in accordance with Condition 3.1, Commsworld will connect the Equipment to the internet, via the Commsworld Network unless otherwise requested not to.
- 1.3. You are required to supply a single 13A rated socket and a single network port per hard phone. If power outage at the Customer Premises is the cause of Service failure or due to failure of internal switching (Customer switches), Commsworld will automatically set all telephones as unavailable and calls to them will be forwarded to their respective voicemails until the normal power is restored and the telephones are re-registered with the Hosted PBX Services.

## **2. Customer Premises**

Where necessary for any installation, provisioning and diagnostics purposes, the Customer will allow full access to LAN networking hardware, structured cabling and networking services, as well as opportunity for full liaison with Customer's internal or third party suppliers relevant to the provision of Services in the event of VoIP networking issues.

## **3. Commsworld's obligations in respect of the Services**

- 3.1 Commsworld will provide the Customer with the following Equipment and Services in accordance with, and where set out in, the customer order or Proposal:
  - 3.1.1 the Equipment required for the Hosted PBX Services as described in the customer order or Proposal;
  - 3.1.2 appropriate cables and connectors to connect the telephones at the Customer's LAN;
  - 3.1.3 configuration on installation, changes, advice and support of that configuration for the Agreement's duration; and/or
  - 3.1.4 timely provision and installation of relevant firmware or software as provided by the vendor of the relevant hardware where required for security or performance purposes as dictated by Good Industry Practices.
- 3.2 Where Equipment is sold to the Customer, the Equipment is provided with a 1 year return to base ("RTB") warranty. All courier and packaging fees will be paid by the Customer.
- 3.3 As part of the diagnostic and performance monitoring of the Hosted PBX and SIP platforms, Commsworld may mirror relevant data traffic through the platforms for a period of no more than 7 days. In some circumstances, use of diagnostic tools involve rebuilding the data stream to audible quality and may be listened to by a member of Commsworld support staff to aid in the diagnostic process. In such cases, Commsworld will ensure Customer consent is gained in writing, and in advance of any such diagnostic process. You shall not unreasonably withhold or delay this consent. If you do not provide consent, then Commsworld shall be excused from all relevant Service Levels.
- 3.4 Commsworld's Voice SLA will be degraded to 'best effort basis' in the event that you opt-out of using a Commsworld 'assured' connectivity product. This includes third party networks and other public Internet services. Under these circumstances and in the event that you experience quality of service or connectivity problems; our obligations will not be guaranteed.

## **4. Emergency calls**

- 4.1 Emergency, operator assistance and directory enquiry calls, ("Lifeline Calls") may be generated from the system but cannot be guaranteed in the event of a local power disruption. When using such systems, including digital PBXs that require local power, you should provision at least one traditional analogue telephone in each building to guarantee Lifeline Calls.

## **5. Service Level**

### **5.1 Hosted PBX services**

Engineer response time on notification of faults by you directly to Commsworld or by system monitoring will be 30 minutes. Engineering support work will be done remotely alongside vendor

support engineers until such time as the fault is identified as requiring an on-site intervention.

There is a 4 hour fault resolution Service Level for the Hosted PBX Services. Failure of the 4 hour fault resolution Service Level shall result in a refund of all line charges for Hosted PBX Services for the relevant month of any service-affecting fault covered by the Service Level. Individual phone failures are not covered by this Service Level. In the event that you experience a phone fault or problem, resolution is provided on a best endeavours basis (i.e. not a system wide or network fault). Failure to access the internet will cause the Hosted PBX Services to fail and in this situation only the Service Level relating to the internet access product will be enforced, the Service Level for the Hosted PBX Services will not apply. The rectification of the internet access service will resolve the failure of all services. The Service Level is enforceable only if there is 24x7 Customer contact.

#### 5.2 SIP Trunking services

Engineer response time on notification of faults by the Customer directly to the Supplier or by system monitoring will be 30 minutes. There is a 4 hour fault resolution Service Level for the SIP Trunking Services.

#### 5.3. Voice services

Where, before 12 noon on a Business Day, we have logged and identified a fault with Equipment which we own and have provided to the Customer, our Service Level will be to replace that Equipment on the following Business Day. The Customer will be asked to replace the faulty handset with a pre-configured one that is couriered to it.

UK-wide packaging and courier charges are included in the Charges. The faulty hardware must be returned to the Supplier quoting the Supplier Return to Manufacture (RMA) ticket reference number for evaluation. If the return is identified as being a Customer problem, then the Customer agrees that it will be liable for any shipping and administration costs.

### 6. Term and Termination

- 6.1. The minimum Initial Period for Hosted Voice Services is 12 months, unless otherwise stated in the Proposal or Customer Order.
- 6.2. Orders shall automatically renew for successive periods of 12 months (Order Renewal Term), unless the customer serves cancellation notice at least 30 days prior to the end of the Initial Period or Renewal Term (as the case may be).

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### G CALL TRAFFIC & LINE RENTAL

#### 1. Outpayment Services

- 1.1 Subject to Condition 1.2 below we will pay the outpayment to you on a monthly basis. While we shall endeavour to make payment on the same date each month this may prove impractical and we therefore reserve the right to pay the outpayment on such date each month as we shall reasonably determine.
- 1.2 We shall be under no obligation to pay any outpayment to you until the amount of outpayment due to you equals or exceeds the minimum outpayment of £10.00. Any outpayment unpaid in any month shall be carried forward and shall become payable at the end of the month in which the amount of outpayment due equals or exceeds the minimum outpayment. Payment of outpayments shall be made by BACS or by such other alternative method of payment as we may reasonably stipulate from time to time.
- 1.3 Prior to payment of the first outpayment you shall provide us with evidence of your VAT status and you shall notify us of any change in your VAT status as soon as reasonably practicable in advance of any such change. We shall be entitled to vary the rate of outpayment payable to you from time to time in line with any amendments made by our Carriers (e.g. BT) to their payment rates.
- 1.4 In the event (for whatever reason) that we fail to receive from our Carriers any monthly call revenue

properly due in respect of the numbers allocated to you then we shall have no liability to pay such monthly call revenue to you, unless and until the Carriers pay such revenue to us. In the event of our Carriers making retrospective amendments to their monthly call revenue payments to us, we shall be entitled to make similar retrospective amendments to the payments made to you. The outpayment due to you shall be calculated by us by reference to our records and not by reference to any records retained by you. We shall be entitled to set off against any outpayment

due to you any sums which you owe to us either in respect of outpayment services or any other service which we provide to you.

## **2. Our Equipment (Fixed Line Services Only)**

- 2.1 If your telephone system has least cost routing software you will need to have your equipment reprogrammed. If your telephone system does not have least cost routing software, Commsworld may supply, install and connect to your telecommunications systems, Commsworld access equipment.

## **3. Our Liability and Responsibility To You**

- 3.1 Any phones supplied by Commsworld shall be subject to the benefit of any manufacturer's warranty

## **4. Suspension and Termination of this Agreement**

- 4.1 If any directly connected services are terminated or if termination is by reason of your breach of this Agreement, Commsworld reserve the right to charge you for any reasonable costs we incur in respect of the installation of such service and ancillary equipment.
- 4.2 Where Services are terminated prior to the expiry of the relevant Initial Period by you in accordance with Clause 12 or by Commsworld as a result of your breach, Commsworld reserves the right to apply a charge equal to the average monthly charges for both calls and service rentals for the remainder of the Initial Period Term. For the avoidance of doubt, such charges will not apply in circumstances where the Agreement is terminated due to a breach of the Agreement by Commsworld.

## **5. Consultancy**

- 5.1 In the event that Commsworld provides a consultancy service concerning your existing network service infrastructure, Commsworld reserve the right to charge a fee for this service. Where the consultancy results in a specific one-off credit to you, the fee payable to Commsworld shall be 50% of the credit amount you received as a result of the Commsworld consultancy. This fee may be waived by Commsworld where the customer subsequently migrates the network services associated with the credit to Commsworld.

## **6. General**

- 6.1 If you take Non Geographic Numbering services from Commsworld, then you herein agree that you shall have no rights of ownership in any Non Geographic numbers allocated to you and that Commsworld reserves the right to change such numbers upon giving you one month's written notice. You further agree to advise Commsworld upon reasonable notice of any major marketing efforts, which will have an impact on the volume of calls being made to such Commsworld numbers such that Commsworld can plan capacity as appropriate.

## **Schedule 2: Acceptable Use Policy (“AUP”)**

This AUP, including the following list of prohibited uses, is an integral part of your Agreement with Commsworld. If you engage in any of the activities prohibited by this AUP, Commsworld may suspend or terminate your Service.

Unless stated otherwise, terms defined in the Conditions shall have the same meaning when used in the Service Specific Conditions.

### **Prohibited Uses of Commsworld Systems and Services**

1. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
2. Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other internet service provider, which includes, without limitation, the facilitation of the means to send unsolicited bulk email, initiation of pinging, flooding, mail-bombing, denial of service attacks.
3. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g. "cracking").
4. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
5. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any Commsworld customers or end-users by any means or device.
6. Knowingly engage in any activities designed to harass, or that will cause a denial-of-service to any other user whether on the Commsworld network or on another provider's network.
7. Using Commsworld's Services to interfere with the use of the Commsworld System by other customers or authorized users.

### **Customer Responsibility for Customer's Users**

As a Commsworld Customer, you are responsible for the activities of your users and, by accepting service from Commsworld, you agree to ensure that your customers/representatives or end-users abide by this AUP. Complaints about your customers/representatives or end-users will be forwarded to your nominated main contact for action. If violations of the AUP occur, Commsworld reserves the right to terminate Services with or take action to stop the offending customer from violating Commsworld's AUP as Commsworld deems appropriate, without notice.

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