

## TERMS AND CONDITIONS

### 1. Commencement

- 1.1. The Contract shall begin on the Commencement Date and shall continue in force for the Initial Term.
- 1.2. Upon expiry of the Initial Term, the Contract shall continue in force automatically for further periods of 12 months (the "Renewal Period") until terminated by either party in accordance with clause 16.
- 1.3. Each Service shall commence on the Service Start Date.

### 2. Provision of the Services

- 2.1. SMARTECH shall provide, and the Customer shall use, the Services in accordance with these Conditions.
- 2.2. SMARTECH shall exercise the reasonable care and skill of a competent telecommunications service provider in the performance of its obligations under the Contract and shall use reasonable endeavours to supply the Services to the Customer and to deliver and install the Service Equipment by any date agreed between the parties. All dates are estimates only and SMARTECH shall not be liable for any failure to provide a Service or to install Service Equipment by any agreed date.
- 2.3. SMARTECH may carry out a Site survey prior to commencing provision of the Services. SMARTECH shall notify the Customer of any additional installation costs identified by such survey and the Customer shall be liable to pay to SMARTECH, on demand, such additional installation costs if the Customer agrees to SMARTECH continuing to provide the Services.
- 2.4. SMARTECH shall be entitled at any time and without liability to modify, expand, improve, maintain or repair the Services or any of its systems, wherever located, including suspension of the same in whole or in part, provided that SMARTECH shall use reasonable endeavours to notify the Customer in advance and to minimise any disruption to the Services.
- 2.5. It is technically impossible to provide the Services free from faults and SMARTECH does not undertake to do so. The quality of the Services depends on the quality and availability of the network to which the Customer is connected and other telecommunications networks across which data is transmitted.
- 2.6. SMARTECH may monitor calls made to its customer services departments to improve the quality of service and for training and verification purposes.

### 3. Use of the Services

- 3.1. The Customer must promptly provide SMARTECH free of charge with all information and co-operation that SMARTECH may reasonably require and comply with SMARTECH's reasonable instructions regarding the use of the Services and/or Service Equipment.
- 3.2. The Customer must not use or permit anyone else to use the Services:
  - 3.2.1. for any unlawful, fraudulent, illegal or immoral purpose;
  - 3.2.2. to cause annoyance, inconvenience, nuisance or needless anxiety (including the making of hoax calls);
  - 3.2.3. to send, knowingly receive, upload, download or use any material, message or communication which is offensive, abusive, indecent, defamatory, obscene or menacing;
  - 3.2.4. to spam, send or provide unsolicited advertising or promotional material, or knowingly to receive responses to spam, unsolicited advertising or promotional material sent or provided by a third party;
  - 3.2.5. other than in accordance with instructions issued by SMARTECH pursuant to the Contract;
  - 3.2.6. in contravention of any licence, code of practice, instructions or guidelines issued by any regulatory authority or in contravention of a third party's rights (including SMARTECH's rights); or
  - 3.2.7. in a way which SMARTECH, acting reasonably, considers is, or is likely to be, detrimental to the provision of the Services to the Customer or to other customers or in a way which could materially affect the quality of any electronic communications service over a public communications network, including the Services.
- 3.3. If SMARTECH suspends the Services pursuant to clause 15.1 for contravention of clause 3.2 it may refuse to restore the Services until it receives an acceptable assurance from the Customer that there will be no further contravention.
- 3.4. Each party shall nominate one person from within its organisation who shall act as the account manager of such party for all matters relating to the Contract.

### 4. Additional Services

- 4.1. The Customer may order new and/or expansion of existing Services (the "Additional Services") at any time. Subject to clause 4.2, any order for Additional Services will be deemed accepted by SMARTECH and be incorporated into the Contract on the earlier of: (i) the date on which the Customer is notified in writing that the order has been accepted by SMARTECH; or (ii) the date on which the Additional Services are first made available to the Customer.
- 4.2. Prior to the Additional Services being made available to the Customer, the Customer must:
  - 4.2.1. sign an Order Form and/or complete such other documentation as may be required by SMARTECH relating to the Additional Services; and
  - 4.2.2. if the Additional Services comprise a Premium Rate Service (in whole or in part), provide SMARTECH with all such documentation as it may require in respect of such Service.

### 5. Equipment

- 5.1. If it is necessary to install Service Equipment to facilitate provision of the Services the Customer shall, at its own expense and in accordance with any instructions given to it by SMARTECH, in advance of installation:
  - 5.1.1. obtain all necessary consents, licences and wayleaves, including consents for any alterations to buildings to allow the installation of the Service Equipment;
  - 5.1.2. provide a suitable environment including all necessary floorspace, trunking, conduits, cable ducts, utility supply and the provision of sufficient electrical connection points in close proximity to the Service Equipment;
  - 5.1.3. ensure that all devices, equipment or plant necessary to connect the Service Equipment to the Customer System are provided and after installation shall operate and maintain such devices, equipment or plant; and
  - 5.1.4. carry out all necessary preparatory work and make good any such work after installation.
- 5.2. All Service Equipment installed at the Site shall remain the property of SMARTECH at all times. The Customer must not add to, modify or in any way interfere with the Service Equipment, nor allow anyone else, other than someone authorised by SMARTECH to do so. The Customer shall be liable for any loss or damage to the Service Equipment howsoever incurred other than normal wear and tear or if caused by SMARTECH or anyone acting on its behalf.
- 5.3. All Customer Equipment and/or Customer System must be:
  - 5.3.1. technically compatible with and must not harm the Services, the Service Equipment, the Network, or another customer's equipment;
  - 5.3.2. in proper working order;
  - 5.3.3. compliant with all applicable standards and approvals for network connection; and
  - 5.3.4. used in compliance with and approved under all relevant instructions, safety and security procedures, standards or laws.
- 5.4. Where equipment is purchased from SMARTECH ("Purchased Equipment"), SMARTECH will use reasonable endeavours to pass on the benefit of any manufacturer's warranty to the Customer. However SMARTECH accepts no liability for or in respect of such Purchased Equipment under any circumstances (including but not limited to warranty claims).
- 5.5. Title to Purchased Equipment will only pass to the Customer once payment has been received in full in cleared funds by SMARTECH. Risk in the Purchased Equipment will pass to the Customer on delivery. The Customer must notify SMARTECH within 28 days of delivery

of any faults in or damage to the Purchased Equipment, after which date the Customer will be deemed to have accepted the Purchased Equipment as being satisfactory.

## 6. Access and Faults

- 6.1. The Customer must grant SMARTECH and its sub-contractors access to the Site at any agreed time during Working Hours. SMARTECH may, on reasonable notice, require access to the Site outside Working Hours. Any work carried out by SMARTECH outside Working Hours shall be subject to additional charges. Where a third party's permission is required, the Customer must obtain such permission.
- 6.2. The Customer shall provide a suitable and safe working environment for SMARTECH and its sub-contractors. SMARTECH and its sub-contractors will comply with the Customer's reasonable requirements as to safety on the Site to the extent that such requirements are communicated to SMARTECH in writing prior to any visit. SMARTECH shall not be liable for any breach of the Contract which arises as a result of conflict between any safety requirements and the Contract.
- 6.3. In the event of a fault affecting a Service the Customer should report the fault to the customer support department on 0845 200 2000. SMARTECH will use reasonable endeavours to respond to the Customer and rectify the fault in accordance with the SLA (if applicable).
- 6.4. If the Customer reports a fault which cannot be rectified remotely SMARTECH may arrange for an engineer to attend the Site or the network terminating unit. SMARTECH reserves the right to charge the Customer an additional sum for this visit, in particular but without limitation if the visit is made outside Working Hours, if the engineer is refused access to the Site or if the engineer finds there is no fault.
- 6.5. SMARTECH shall have the right to recover all reasonable costs incurred in investigating or remedying any fault with a Service where it is caused by the Customer's negligence or default, by the Customer Equipment or where the fault does not lie with SMARTECH or any Service Equipment.
- 6.6. The Customer shall be responsible for all Charges incurred whilst the Service is unavailable due to any fault.

## 7. Charges

- 7.1. The Customer shall be liable for all Charges incurred for each Service from the Commencement Date, whether the Services are used by employees of the Customer or by any other person with or without the Customer's permission or knowledge and notwithstanding that they may have arisen from unauthorised, fraudulent, or illegal use and whether or not they derive from installation and access which have been authorised by SMARTECH.
- 7.2. The Customer shall be billed and agrees to pay:
  - 7.2.1. monthly in advance for any recurring charges (for example subscription or rental charges); and
  - 7.2.2. monthly in arrears for usage and non-recurring charges (for example calls or connection charges).
- 7.3. SMARTECH reserves the right to invoice the Customer at any time for any Charges which have been incurred by but not billed to the Customer, in particular but without limitation, where SMARTECH receives an invoice from its suppliers for services or goods previously supplied to, but not invoiced to, the Customer.
- 7.4. Charges will be calculated by reference to the Tariff provided to the Customer and to data recorded by SMARTECH. In the absence of any manifest error, such records will be deemed conclusive.
- 7.5. All Charges are subject to change by SMARTECH giving not less than 30 days prior written notice to the Customer.
- 7.6. Where the Customer fails to comply with clause 5.1 or if SMARTECH is unable to access the Site to carry out any installation work or fault repair work SMARTECH may charge the Customer for an aborted visit.

## 8. Payment

- 8.1. The Customer must pay the Charges in full by direct debit (without deduction or set off). Failed direct debits (for whatever reason) will be subject to a £5 charge.
- 8.2. In the event that payment cannot be made by direct debit, the Customer must pay the Charges in full (without deduction or set off) within 14 days of the date of any invoice issued by SMARTECH (the "Due Date"). Time for payment of Charges shall be of the essence. Invoices paid by means other than direct debit will be subject to a £5 monthly charge.
- 8.3. Unless otherwise stated all Charges are exclusive of value added tax which, where applicable, will be added to the invoice at the prevailing rate.
- 8.4. Invoices shall be provided to the Customer electronically. Paper invoices will be provided on request, however SMARTECH reserves the right to require the Customer to pay a reasonable sum to cover the cost of providing paper invoices.
- 8.5. SMARTECH reserves the right to claim statutory interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 8.6. If the Customer does not pay any amount due by the Due Date, SMARTECH may instruct a debt collection agency to collect payment (including any interest and/or late payment charges) on its behalf. If SMARTECH instructs such an agency, the Customer must pay an additional charge, not to exceed the reasonable costs SMARTECH incurs in instructing the agency. This charge will be added to the Customer's outstanding debt by the agency.
- 8.7. SMARTECH may at any time:
  - 8.7.1. carry out a credit check on the Customer and the Customer agrees to provide SMARTECH with any information reasonably required for this purpose;
  - 8.7.2. limit the amount of credit which it advances to the Customer;
  - 8.7.3. require the Customer to pay a deposit, make payments on account or provide some other form of guarantee as security for future charges; and/or
  - 8.7.4. register information about the Customer and the Customer's account with credit reference agencies. SMARTECH and other lenders may use this information to make credit decisions. This information may also be used to prevent fraud and to trace debtors.
- 8.8. SMARTECH may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between SMARTECH and the Customer if:
  - 8.8.1. SMARTECH has reason to believe the Customer is in breach of the Contract;
  - 8.8.2. the Customer is conducting its business or using a Service illegally or for an illegal purpose; and/or
  - 8.8.3. SMARTECH has received notice from another network operator that payment will be withheld in respect of Calls and SMARTECH has satisfied itself on reasonable grounds that such event has occurred. The Customer will not be entitled to any payment of Call Commission in respect of such Calls (if applicable).
- 8.9. SMARTECH reserves the right at any time to set off any sums owing from the Customer to SMARTECH against any sums owing from SMARTECH to the Customer.

## 9. Security

- 9.1. In order to access the Services, SMARTECH may provide the Customer with a set of passwords. The Customer is responsible for the security and proper use of all passwords relating to the Services and must keep them confidential and must not disclose them to any third party.
- 9.2. The Customer must inform SMARTECH immediately if it suspects that any password in relation to the Services has become known to someone who is not authorised to use it.
- 9.3. If SMARTECH suspects that there is likely to be a breach of security or a misuse of the Services it may change the Customer's password (without notice) and notify the Customer accordingly.

## 10. Intellectual Property Rights

- 10.1. Except as expressly set out in these Conditions, the parties will not acquire any rights or licences to the other party's IPR. All IPR in any

software (and associated written or electronic documentation) provided to the Customer as part of the Services shall remain the property of SMARTECH or its licensors.

- 10.2. Where software is supplied to enable the Customer to use a Service, SMARTECH grants the Customer a non-exclusive, non-transferable licence to use such software for that purpose only. Unless otherwise agreed in writing, any licence granted by SMARTECH will expire on termination of the Contract or of the relevant Service.
- 10.3. The Customer shall not, and shall not permit anyone else to, copy, modify, reverse engineer, decompile or otherwise endeavour to obtain the source code of such software, nor copy the manuals or documentation supplied with such software, except to the extent permitted by law.
- 10.4. If requested by SMARTECH the Customer shall sign any agreement which is reasonably required by the owner of the IPR in such software to protect its rights or interests therein. No additional charges will be payable under any such agreement. The Customer acknowledges that failure to do so may result in SMARTECH being unable to supply such software.

#### **11. Indemnity**

- 11.1. The Customer indemnifies SMARTECH against any claims or legal proceedings (including damages, loss, costs and expenses) which are brought or threatened against SMARTECH or its sub-contractors by any third party as a result of the Customer's use of the Services otherwise than in accordance with the Contract.
- 11.2. SMARTECH will notify the Customer of any claims or legal proceedings and will keep the Customer informed as to the progress of such claims or legal proceedings.

#### **12. Confidentiality**

- 12.1. The parties will keep in confidence any information of a confidential nature obtained under the Contract (whether written or oral) including the Charges and will not disclose such confidential information to any person (other than their employees and professional advisers who need to know the same for the purpose of the Contract and who are under a duty of confidentiality equivalent to this clause 12) without the prior written consent of the other party.
- 12.2. This clause 12 will not apply to:
  - 12.2.1. any information which has been published other than through a breach of these Conditions;
  - 12.2.2. information lawfully in the possession of the recipient before the disclosure under the Contract took place;
  - 12.2.3. information obtained through a third party who is free to disclose it; and
  - 12.2.4. information which a party is required by law to disclose.
- 12.3. The Customer acknowledges that SMARTECH is unable to share information regarding a Customer's account with another telecommunications service provider.
- 12.4. SMARTECH shall only discuss the Customer's account with the Customer and, where the Customer is a business, only with those employees with the requisite authority.
- 12.5. SMARTECH may disclose information relating to the Customer (including confidential information) to its Group Companies and the Customer consents to such disclosure.

#### **13. Liability**

- 13.1. Neither party excludes or limits its liability for personal injury or death caused by its negligence or for fraudulent misrepresentation or to any extent not permitted by law and clauses 13.2, 13.3 and 13.4 will not apply to such liability.
- 13.2. SMARTECH will only be liable to the Customer for claims made in writing within 6 months of the date on which the Customer becomes aware or ought reasonably to have become aware of the grounds of such a claim.
- 13.3. Subject to clause 13.2 above, SMARTECH's aggregate liability to the Customer in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to the lesser of:
  - 13.3.1. £10,000; or
  - 13.3.2. the amount of Charges paid by the Customer in the 12 month period immediately preceding the date on which SMARTECH is notified of the claim;
- 13.4. Subject to clauses 13.2 and 13.3 above, SMARTECH shall not be liable to the Customer in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise for direct, indirect or consequential loss of profit, revenue, time, business, anticipated savings, opportunity, use, wasted expenditure, loss of or damage to physical property or for any direct, indirect or consequential loss, corruption or destruction of data, whether or not SMARTECH was advised or aware of the possibility of such damages, losses or expenses.
- 13.5. In the event of any failure of a Service, SMARTECH shall not be liable to the Customer should the Customer temporarily or permanently divert its traffic to another service provider.
- 13.6. Except as set out in these Conditions, all other warranties, terms or conditions whether implied by statute or otherwise are hereby expressly excluded.
- 13.7. Each provision of this clause 13 operates separately and if any part is held by a court to be unreasonable or inapplicable the other parts shall remain in force.

#### **14. Assignment**

- 14.1. Subject to clause 14.2 below, neither party may assign or otherwise transfer any of its rights or obligations under the contract without the prior written consent of the other party.
- 14.2. SMARTECH may assign or otherwise transfer its rights or obligations to a Group Company without the Customer's consent provided it notifies the Customer that it has done so as soon as reasonably practicable.

#### **15. Suspension**

- 15.1. SMARTECH may at its sole discretion (without liability and without losing or reducing any other right or remedy it has under these Conditions) temporarily suspend the Services either in whole or in part and/or temporarily disconnect any Number until further notice on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:
  - 15.1.1. the Customer has failed to pay any sums due to SMARTECH under the Contract or any other agreement between the parties;
  - 15.1.2. the Customer is in breach of the Contract;
  - 15.1.3. the Customer prevents or delays any prearranged maintenance from being carried out;
  - 15.1.4. operational reasons require it;
  - 15.1.5. the Charges have reached the limit set under clause 8.7.2;
  - 15.1.6. the quality of the Services or the operation of the Network may be or is impaired or otherwise adversely affected;
  - 15.1.7. there is a case of emergency or SMARTECH is obliged to do so by an emergency service organisation (in which case no prior notice will be required);
  - 15.1.8. the events set out in clauses 16.1 and/or 16.3 occur;
  - 15.1.9. SMARTECH is required to do so by a Public Network, the government or any body with competent jurisdiction or any of its suppliers;
  - 15.1.10. SMARTECH has reasonable grounds to believe that a Service is being used illegally or for criminal or fraudulent purposes.
- 15.2. The Customer will continue to pay the Charges during any period of suspension.

## 16. Termination

- 16.1. Either party may terminate the Contract with immediate effect on written notice to the other if the other party:
- 16.1.1. commits a material breach or persistent breaches of the Contract (including a failure to pay any sums due under the Contract) and, where such breach is capable of remedy, has failed to do so within 30 days of receipt of written notice specifying the breach and requiring its remedy; or
- 16.1.2. is subject to bankruptcy or insolvency proceedings or, in Scotland, sequestration proceedings, becomes insolvent, makes any composition or arrangement with or assignment for the benefit of its creditors, or goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over its assets.
- 16.2. The Customer may terminate a Service by giving at least 90 days prior written notice to SMARTTECH, such notice to expire at the end of the Initial Term or Renewal Period for the Service being terminated. The Customer may terminate each Service independently of another Service however the Customer may only terminate the Contract in its entirety once the Initial Term for all Services provided under the Contract has expired.
- 16.3. SMARTTECH may terminate the Contract with immediate effect on written notice to the Customer:
- 16.3.1. in order to comply with a decision or action of a competent regulatory authority;
- 16.3.2. if the General Authorisation to operate the Network and/or to provide the Services or any part thereof shall expire, be revoked or terminate for any reason without the immediate renewal thereof; or
- 16.3.3. any contract upon which SMARTTECH relies for the provision of the Services is terminated (for whatever reason).
- 16.4. SMARTTECH may terminate the Contract and all Services provided thereunder at any time by giving not less than 90 days prior written notice to the Customer.
- 16.5. On termination of the Contract for any reason:
- 16.5.1. all monies then owing by the Customer to SMARTTECH shall become immediately due and payable;
- 16.5.2. any monies owing by SMARTTECH to the Customer shall be calculated by SMARTTECH at the same time as the Customer's final bill and shall be paid as soon as reasonably practicable thereafter. Any monies owing by SMARTTECH to the Customer which are disputed by either party shall be retained by SMARTTECH until such dispute has been settled; and
- 16.5.3. the Customer shall promptly allow SMARTTECH access to the Site to remove the Service Equipment and shall make good such removal afterwards.
- 16.6. Where a Service or the Contract is terminated prior to expiry of the Initial Term or Renewal Period (as applicable), other than for breach by SMARTTECH, the Customer shall pay SMARTTECH:
- 16.6.1. all outstanding Charges due for each Service from the date of termination up to the end of the Initial Term or Renewal Period (as applicable) for each Service terminated; and
- 16.6.2. the cost of de-installation of any Service Equipment in relation to that Service.
- 16.7. If the Customer continues to route calls over the Network after termination, the Customer will be charged for such calls at SMARTTECH's then standard rates. The Customer shall pay such charges on demand and clause 8 shall apply in relation to such charges.
- 16.8. On termination, any consequential reprogramming of the Customer Equipment shall be the Customer's responsibility and at the Customer's cost. SMARTTECH is not responsible for any redecorating work at the Site.
- 16.9. Termination of the Contract shall be without prejudice to any claims or remedies that either party may have against the other accrued up to the date of termination.
- 16.10. On termination of the Contract (for whatever reason) clauses, 7.1, 8, 10, 11, 12, 13, 16, 17.6 and 17.10 shall remain in force (so far as necessary).

## 17. General

- 17.1. SMARTTECH reserves the right to vary these Conditions at any time provided that any change shall not materially affect the Service or the performance of any Service except insofar as it is reasonable to do so. SMARTTECH will post the current version of these Conditions on SMARTTECH's website (<http://www.smartechuk.com>) and the Customer is advised to review these at regular intervals.
- 17.2. Neither party shall be deemed to be in breach of the Contract or otherwise be liable by reason of any delay in performance or non-performance of any of its obligations under the Contract (other than the obligation to make payments due under it) to the extent that such delay or non-performance is caused by a matter beyond its reasonable control of which it has notified the other party, including but not limited to insurrection or civil disorder, war or military operation, international, national or local emergency, acts or omissions of government, highway authority or other competent authority, failure or delay of a supplier to supply SMARTTECH with the Services, compliance with any statutory or regulatory obligation or constraint, industrial disputes of any kind (whether or not involving SMARTTECH employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, or acts or omissions of persons for whom it is not responsible (including in particular other telecommunications service providers). If, pursuant to this clause, either party is unable to perform its obligations under the Contract for a continuous period of 3 months or longer, either party may terminate the Contract in whole or in part with immediate effect on giving written notice to the other.
- 17.3. The parties shall comply with all applicable laws and regulations relating to supply and use of the Services, including the Data Protection Act 1998 and any other data protection, privacy or similar laws. The parties shall provide such help and co-operation as is reasonably necessary or requested by the other to enable compliance with this clause. SMARTTECH may from time to time disclose personal data to its sub-contractors, Group Companies and service providers in order to supply the Services.
- 17.4. A notice given under the Contract must be in writing and may be delivered by hand or sent by prepaid first class post or facsimile to the addressee at the address for that party set out on the Order Form, and if to SMARTTECH must be marked for the attention of the Customer Services Manager with a copy to the Company Secretary. Either party may, by notice in writing to the other in accordance with this clause, change its address for service.
- 17.5. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.
- 17.6. The Contract sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements, whether written or oral, in respect of the subject matter of the Contract.
- 17.7. The parties acknowledge and agree that they have not been induced to enter into the Contract by, nor have they relied on any statement, representation, warranty or other assurance not expressly incorporated in it and that with the exception of fraudulent representations, their sole remedies in connection with the Contract are those for breach of contract and all other remedies are excluded.
- 17.8. Unless expressly provided in these Conditions, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- 17.9. If any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction that provision shall be deemed not to be a part of this Contract, it shall not affect the enforceability of the remainder of this Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 17.10. The Contract shall be governed by and construed in accordance with English law and each of the parties irrevocably submits for all purposes in connection with the Contract to the exclusive jurisdiction of the courts of England.

## 18. Definitions and Interpretation

- 18.1. In the Contract unless the context otherwise requires: "Access Service" means such service made available by SMARTTECH to the

Customer allowing the conveyance of telephone calls to a Number from time to time pursuant to the Contract. **"Additional Service(s)"** shall have the meaning given in clause 4.1. **"Call"** means a telephone call connected to an End User Service (as defined in Schedule 2) by means of an Access Service. **"Call Commissions"** means such sums payable by SMARTECH to the Customer from time to time in respect of Calls as set out on the Order Form or in the Tariff. **"Charges"** means the price payable for the Services as set out on the Order Form or as specified in the Tariff. **"Commencement Date"** means the date on which SMARTECH indicates its acceptance of the Contract, either by sending the Customer a welcome letter or by commencing provision of the Services, whichever is earlier. **"Conditions"** means these terms and conditions (together with any attached schedules). **"Contract"** means the contract for the supply of Services made between SMARTECH and the Customer, set out in the Order Form and these Conditions. **"Customer"** means the person with whom SMARTECH contracts to supply the Services and whose details are set out on the Order Form. **"Customer Equipment"** means any equipment, including any telecommunications apparatus or system or software, which is owned or controlled by the Customer. **"Customer System"** means any telecommunications and/or other equipment operated by the Customer and used in connection with the Services and/or Service Equipment, whether supplied by SMARTECH or a third party. **"Due Date"** shall have the meaning given in clause 8.2. **"General Authorisation"** means the EU communications regime, pursuant to which, there is a general authorisation to provide communications networks or services in the UK, subject to the General Conditions of Entitlement issued pursuant to the Communications Act 2003. **"Group Company"** means in relation to either party, that party and any holding company, parent company, subsidiary or fellow subsidiary undertaking of that party or of its holding company or parent company (as such terms are defined in sections 1159, 1161, 1162 and 1173 of the Companies Act 2006).

**"Initial Term"** means 12 months from the Commencement Date or where a Service is supplied, 12 months from the Service Start Date for that Service, or such other period specified on the Order Form for such Service, whichever is the later. **"IPR"** means all patent rights, trademarks, copyright, design rights, database rights, rights in inventions, semiconductor topography rights, know-how, or any similar right exercisable in any part of the world (whether registered or unregistered) and including any applications for the registration of any patents or designs. **"Network"** means any telecommunications system run by or on behalf of SMARTECH from time to time pursuant to the General Authorisation. **"Number"** means either (i) such telephone number from within a national number group range used by SMARTECH in connection with the provision of an Access Service and as may be allocated by SMARTECH to the Customer from time to time (**"SMARTECH Number"**) or (ii) such telephone number not being a SMARTECH Number from within a national number group range used by the Customer in connection with an End User Service (as defined in schedule 2) and as may be programmed by SMARTECH in the SMARTECH Network for the purposes of making available an Access Service in respect of such telephone number. **"Order Form"** means an order form accepted by the Customer requesting the supply of any or all of the Services from SMARTECH. **"Premium Rate Service"** means any service comprising live or recorded telephone information and/or entertainment and similar services which would be defined as such in the Code (as defined in Schedule 2). **"Public Network"** means any public telecommunications system to which the Network and/or the Customer System is connected for the purpose of providing some or all of the Access Services hereunder. **"Purchased Equipment"** shall have the meaning given in clause 5.4. **"Renewal Period"** shall have the meaning given in clause 1.2. **"Service"** means a service and an Additional Service (if any) to be provided by SMARTECH to the Customer and set out on an Order Form and **"Services"** means all such Services. **"Service Equipment"** means any equipment owned or controlled by SMARTECH and placed on or installed at the Site for the provision of the Services. **"Service Start Date"** means the date on which a Service is first made available to the Customer. **"Site"** means the Customer's premises where the Services are to be provided, as set out on the Order Form. **"SLA"** means the service level agreement entered into between SMARTECH and the Customer in relation to a Service (if any).

**"Tariff"** means the list of prices payable in relation to the Services as notified to the Customer from time to time. **"Working Days"** means Monday to Friday, excluding any public or bank holidays. **"Working Hours"** means between 0800 and 1700 on Working Days.

18.2. In the Contract, unless the context otherwise requires:

18.2.1. words in the singular include the plural and vice versa and words in one gender include any other gender;

18.2.2. a reference to:

(a) any party includes its successors in title and permitted assigns;

(b) a **"person"** includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);

(c) clauses, paragraphs and schedules are to clauses and schedules of these Conditions; and paragraphs of the schedules and

18.2.3. the headings are for convenience only and shall not affect the interpretation of these Conditions.

## Schedule 1 – Supplemental provisions for Business Telephony Services

1. **Definitions** In this Schedule: **"Monthly Spend"** means such amount as specified on the Order Form.
2. **Conflict and precedence** In the event of a conflict between the provisions contained in this schedule 1 and those contained in the body of the Conditions, the provisions in this schedule 1 shall prevail.
3. **Use of the Services** SMARTECH may, not more than once in any calendar month, require the Customer to provide forecasts of traffic and/or use of the Services in any format which SMARTECH may reasonably require. The Customer shall make such forecasts available to SMARTECH within 14 days of any request.
4. **Charges** The Customer acknowledges that SMARTECH will incur cost and expense in providing the Services and any Service Equipment and that SMARTECH relies on the Customer achieving the Monthly Spend. If the Charges fall below the Monthly Spend in any month, SMARTECH shall be entitled to invoice the Customer for the shortfall between the actual Charges incurred and the Monthly Spend. The Customer agrees that any such amount represents a reasonable pre-estimate of the loss SMARTECH is likely to suffer by reason of the Customer not achieving the Monthly Spend.
5. **Termination** In addition to all Charges due on termination of the Contract prior to expiry of the Initial Term or Renewal Period (as applicable) for any Services (pursuant to clause 16.5 of the Conditions) the Customer shall pay to SMARTECH a sum equal to 30% of the average monthly call spend for each Service terminated for the period from the Service Start Date up to the date of termination multiplied by the number of months remaining until expiry of the Initial Term or Renewal Period (as applicable) for each Service terminated.

## Schedule 2 – Supplemental provisions for Non Geographic Numbers and Premium Rate Services

### 1. Definitions

In this Schedule: “**Call Charges**” means any charges made by SMARTECH to the Customer from time to time in respect of Calls as set out in the Tariff. “**Callers**” means any person making a Call. “**Code**” means any code of practice published by PhonepayPlus from time to time. “**End User Service**” means such entertainment, live or recorded information or other service (including Premium Rate Services) made available by the Customer from time to time for itself or any Information Provider by means of (in whole or in part) the Customer System (including any bureau service) and using a Number and Access Service. “**Information**” means information or other content which is made available to Callers and which represents the subject matter of a Premium Rate Service in whole or in part. “**Information Provider**” means any organisation or person providing Information or with whom the Customer contracts in respect of the provision of Premium Rate Services. “**Ofcom**” means the body corporate responsible for regulating the UK communications industries, established by the Office of Communications Act 2002. “**PhonepayPlus**” means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of PhonepayPlus by any competent authority.

### 2. Conflict and precedence

In the event of a conflict between the provisions contained in this schedule 2 and those contained in the body of the Conditions, the provisions in this schedule 2 shall prevail.

### 3. Use of Services

3.1. The Customer must:

3.1.1. provide the End User Service and/or Information of a quality, nature and kind that is not likely to bring SMARTECH or the Access Service into disrepute or contravene the Code. SMARTECH shall determine whether an End User Service or Information is compliant and such determination shall be binding on the Customer;

3.1.2. not state or imply any approval by SMARTECH of the content of the End User Service or Information or refer to SMARTECH without SMARTECH’s prior written approval;

3.1.3. not sub-allocate or resell the Access Service or any Number;

3.1.4. comply with and observe (and require any Information Provider to comply with and observe) all laws, requirements and conditions (including the Code) which apply to or otherwise affect the End User Service or Information. The Customer must abide by and implement any instruction, direction, recommendation, opinion or advice given by PhonepayPlus with regard to End User Services or Information generally or with regard to a particular type of End User Service or Information;

3.1.5. ensure, before making available an End User Service or Information, all rights, licences and other consents have been obtained and all requirements of law complied with for the purpose of the provision of the End User Service or Information to Callers;

3.1.6. incorporate into any contract or arrangement it may make with any third party for the provision of Premium Rate Services provisions requiring such third party to observe the Code and to enable SMARTECH to enforce sanctions imposed under the Code or any rights SMARTECH has as set out in this Contract against such third party; and

3.1.7. on demand, provide SMARTECH and/or PhonepayPlus within 2 Working Days with such information and material relating to an End User Service or any future End User Service as may reasonably be requested.

3.2. The Customer agrees that PhonepayPlus may monitor any End User Service at any time.

3.3. Any failure by the Customer to comply with or implement any of the obligations contained in paragraph 3.1 of this schedule 2 shall be deemed to be a material breach of the Contract.

3.4. In respect of each End User Service which requires the approval of PhonepayPlus pursuant to any regulation or code of practice, the Customer shall, before such End User Service (or any change thereto) is made available to Callers, submit to SMARTECH written evidence of such approval.

3.5. The Customer shall itself, and shall ensure that each Information Provider shall:

3.5.1. observe all relevant legislation and comply with any codes of practice, directions or requests for information made by PhonepayPlus or the Secretary of State or any other body with competent jurisdiction or persons authorised on their behalf;

3.5.2. not act or omit to act in any way which may injure or damage any persons, property or the Network or cause the quality of the Access Service or any part thereof to be prejudiced or impaired; and

3.5.3. not delegate or sub-contract to any third party the rights provided to the Customer under the Contract.

#### Traffic Forecasting

3.6. SMARTECH shall only be obliged to provide the Access Services to the capacity levels forecast by the Customer from time to time.

3.7. The parties shall co-operate and liaise together on a weekly basis (or at such other frequency as may be agreed) with a view to agreeing the basis upon which the anticipated number of Calls to an Access Service and, in particular, the predicted number of Calls to all Access Services during the busy hours from time to time will be calculated, together with the profile of Calls through the day experienced and/or anticipated by the Customer from time to time.

3.8. The Customer shall provide to SMARTECH:

3.8.1. at the end of each month (or at such other frequency as may be agreed by the parties from time to time) a written forecast of its estimated requirements for cumulative capacity within the Network and/or circuits applicable to each Access Service for each month within the following 6 months; and

3.8.2. at least 7 Working Days prior written notice of any promotion of an End User Service on television or other media where the Customer reasonably believes such promotion will generate an increase in Calls beyond those forecast in accordance with the provisions set out above.

#### Numbers

3.9. The ownership of any SMARTECH Number allocated to the Customer from time to time shall at all times remain vested in SMARTECH and any allocation shall take effect as a licence to the Customer to use the same only in accordance with and subject to the terms of the Contract. In particular the Customer must not attempt to sell, transfer or otherwise assign any SMARTECH Number to any other person. Unless otherwise agreed, any SMARTECH Number allocated to the Customer shall be at the sole discretion of SMARTECH.

3.10. SMARTECH shall have the right to refuse the connection of a Number or to withhold the allocation of any Number during the period of any breach of the Contract by the Customer.

3.11. Unless otherwise agreed, if any Number remains unconnected to or is disconnected from the Network or any Access Service for any reason for a continuous period in excess of 3 calendar months and/or during such period no Calls have been received in respect of any such Number, SMARTECH may withdraw and reallocate to itself or to a third party such Number without liability by giving not less than 21 days prior written notice to the Customer.

3.12. All SMARTECH Numbers are allocated to SMARTECH by Ofcom and the allocation of any SMARTECH Number and its use shall remain subject to any regulations, directions or instructions issued or given by Ofcom or any other body with competent jurisdiction from time to time, including the withdrawal, termination or suspension thereof.

### 4. Commissions

4.1. Subject to paragraphs 4.4 and 4.5 below, SMARTECH shall pay Call Commissions to the Customer in respect of Calls to each applicable Access Service delivered to and received by a Customer System at the rate and in the amount set out on the Order Form or in the Tariff.

4.2. Following the end of each calendar month, SMARTECH will submit a detailed statement to the Customer setting out the number and

- duration of all such Calls delivered and received by the Customer System. Following receipt of the statement the Customer shall submit an invoice to SMARTECH in the amount shown as owing on the statement, or where agreed by the parties, SMARTECH shall implement a self-invoicing process on behalf of the Customer. SMARTECH shall pay the Call Commission within 30 days of the date of such invoice.
- 4.3. All Call Commissions invoiced by either party hereunder are exclusive of VAT and shall be paid together with VAT at the appropriate rate.
  - 4.4. SMARTECH shall not pay Call Commissions in respect of any Call which it reasonably believes may have originated outside the United Kingdom.
  - 4.5. Call Commission shall not be payable on invoice balances of £10 or less. Invoice balances shall not roll over from one month to the next.
  - 4.6. In the event that any Access Service is made available to the Customer and the Customer uses such Access Service and no Call Commissions, Call Charges or other charges are specified on the Order Form or in the Tariff then SMARTECH's published tariff guide rates for such Access Services shall be deemed to be included in the Tariff.
  5. **Payment**
    - 5.1. Where SMARTECH is notified in writing by PhonepayPus that:
      - 5.1.1. any sums payable by the Customer to PhonepayPlus or to any compensation fund or bond established by PhonepayPlus have not been paid; and/or
      - 5.1.2. the Customer or any Information Provider is in breach of the Code; SMARTECH may withhold all sums due to the Customer until SMARTECH has been notified by PhonepayPlus that all such sums, fines, administrative charges or other sums payable to PhonepayPlus under the Code have been paid in full or any breach has been remedied, and if requested by PhonepayPlus SMARTECH may pay such sums to PhonepayPlus in settlement of amounts owed to PhonepayPlus. In the event that amounts are paid by SMARTECH to PhonepayPlus to settle amounts owed by the Customer then such amounts shall be deducted from any amounts owed by SMARTECH to the Customer.
  6. **Insurance** The Customer shall effect and maintain suitable legal liability insurance in such amount as SMARTECH may reasonably require (being not less than £250,000) from time to time for each and every claim arising and shall produce to SMARTECH on demand a copy of such insurance policy together with the receipt for the current premium.
  7. **Suspension** In addition to its rights under clause 15.1, SMARTECH may at its sole discretion (without liability and without losing or reducing any other right or remedy it has under the Contract) temporarily suspend the Services either in whole or in part and/or temporarily disconnect any Number on notifying the Customer either orally (confirming the same in writing) or in writing in the event that the Customer is in breach of the Code.
  8. **Termination**
    - 8.1. In addition to the causes for termination provided in clause 16.1, either party may terminate the Contract with immediate effect on written notice to the other if for any reason there is a complete or major suspension of the Access Services for a period in excess of 3 calendar months. In the event of termination pursuant to this paragraph 8.1, neither party shall have any liability to the other in respect of (i) the termination of the Services; or (ii) the period of suspension of the Access Services prior to termination other than for any outstanding sums due from one party to the other.
    - 8.2. On termination of the Contract for any reason the Customer shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Number from the Access Services. SMARTECH may forward Calls made to Numbers previously in use by the Customer to appropriate recorded announcements or other destinations as it sees fit.

### Schedule 3 – Supplemental provisions for Broadband

1. **Definitions** In this Schedule: “**ADSL**” (Asynchronous Digital Subscriber Line) means a broadband technology that delivers high data transfer speeds over existing phone lines. “**Broadband**” means a high bandwidth internet connection. “**BT**” means BT Group plc registered in England and Wales with company number 04190816. “**Channel**” means a pathway for the transmission of signals between two points. “**CLI Code**” means the Code of Practice for Network Operators in relation to Customer Line Identification Display Services and other related services published by Ofcom. “**DDI**” (Direct Dialling Inward) means an individual phone number allocated to an extension and/or department.  
 “**DSL**” (Digital Subscriber Line) provides digital data transmission over the wires of a local telephone network.  
 “**DSLAM**” (Digital Subscriber Line Access Multiplex) means a network device, usually at a telephone company central line using multiplexing techniques. “**IP**” (Internet Protocol) means the standard for sending the basic unit of data, an IP datagram, through the internet. “**Minimum Channels**” means 2 Channels.  
 “**Presentation Number**” means a number which identifies a user's extension number behind a DDI switchboard or the DDI switchboard number.  
 “**PSTN**” (Public Switched Telephone Network) means exchange lines provided by a network provider.  
 “**SIP**” (Session Initiation Protocol) means a multi-media signalling standard enabling voice communication over an internet service.
2. **Conflict and precedence** In the event of a conflict between the provisions contained in this schedule 3 and those contained in the body of the Conditions, the provisions in this schedule 3 shall prevail.
3. **Customer's obligations**
  - 3.1. The Customer must, for the duration of the Contract, maintain a valid contract for the use of a BT analogue exchange line which terminates on a BT public master socket forming part of the BT network.
  - 3.2. If the Customer is migrating an existing IP connectivity service identical or substantially similar to the Broadband service to be provided by SMARTECH from another electronic communications provider, the Customer must sign all documents and complete all acts reasonably necessary to give effect to such migration. Any failure to do so will mean that SMARTECH is unable to provide Broadband.
  - 3.3. The Customer accepts responsibility for virus checking, cleansing and/or anti-spam filtering all incoming and outgoing transmissions of data.
  - 3.4. The Customer must not use, or permit another person to use, the Broadband service:
    - 3.4.1. to knowingly make available or upload files that contain software, data, information or other material not owned by or licensed to the Customer or that contain a virus or corrupt data;
    - 3.4.2. to falsify the true ownership of software, other material or information or to falsify user information;
    - 3.4.3. to publish, post, distribute, disseminate, send, knowingly receive, upload, download, use or re-use material in breach of copyright, privacy or any other rights;
    - 3.4.4. to deliberately abuse any part of a Service or act in such a way which threatens the integrity or security of any computer system or to violate any restriction on the size of emails;
    - 3.4.5. to post or send: (i) the same or similar messages in multiple use net or news groups; and/or (ii) off-topic items to multiple use net or news groups;
    - 3.4.6. to send or provide unsolicited commercial messages or communications or to degrade the use of services by third parties;
    - 3.4.7. to avoid incurring or paying charges for such usage;
    - 3.4.8. to violate general standards of internet conduct and usage, such as denial of service attacks, web-page defacement or port and network

- scanning;
- 3.4.9. to disclose passwords or forge addresses;
- 3.4.10. to share network connections in a manner enabling third parties to access and use such connections; or
- 3.4.11. other than in accordance with the acceptable use policies of any connected networks.
- 4. **Restrictions on Service Levels**
- 4.1. Broadband is not available outside the service availability area and SMARTTECH shall notify the Customer if this is the case. The Site will be subject to a survey and may be rejected if the survey indicates supply of Broadband is not technically feasible or is not possible for reasons beyond the reasonable control of SMARTTECH, in which case SMARTTECH shall notify the Customer of the reason for such rejection. Dates for a Site visit will be agreed in advance with the Customer.
- 4.2. Broadband is available in the event that fibre optic cable or radio access systems provide any part of the link from the Site to the local exchange.
- 4.3. Installation of the Service Equipment is not a guarantee that Broadband can be activated successfully. If Broadband cannot be activated SMARTTECH shall close the Customer's order without charge.
- 4.4. The Customer acknowledges that the maximum ADSL speed of up to 8Mb is subject to various factors, including without limitation, local availability, distance of the Site from the nearest service enabled exchange and line tests. Broadband speed may be reduced by the number of users accessing the same internet connection at the exchange and by rate adaptation of routers. If the Customer's line does not support up to 8Mb, SMARTTECH will offer the best speed available on the Customer's line.
- 4.5. Broadband may affect the performance of some of the Customer's PSTN equipment. SMARTTECH shall use its reasonable endeavours to notify the Customer of any such equipment.
- 4.6. The Customer acknowledges that during the installation of Broadband there may be a temporary loss of the analogue direct exchange service available over the twisted copper pair used to supply Broadband. The Customer acknowledges and accepts that any incorrectly wired extensions to the existing master socket found during the installation shall be left unconnected.
- 4.7. SMARTTECH accepts no responsibility or liability for the setting-up or programming of any Broadband Customer Equipment. SMARTTECH will not provide any advice, technical support or fault-finding support relating to the operation or configuration of Broadband Customer Equipment.
- 5. **Termination and Suspension**
- 5.1. Without prejudice to its other rights under the Contract, SMARTTECH may terminate or suspend the Contract with Immediate effect by notice in writing if a network operator relocates any relevant DSLAM resulting in an increased distance between the exchange and the Site that means it is not technically possible to provide Broadband at the Site.
- 9.2. In the event that SMARTTECH terminates the Contract under paragraph 9.1 of this schedule 3 then it shall refund to the Customer any Charges paid in advance by the Customer on a pro rata basis.
- 9.3. The following shall replace clause 16.2 of the Conditions in relation to the Broadband service only: "The Customer may terminate the Broadband service by giving at least 30 days prior written notice to SMARTTECH, such notice to expire at the end of the Initial Term or Renewal Period for the Service being terminated. The Customer may terminate the Broadband service independently of another Service however the Customer may only terminate the Contract in its entirety once the Initial Term for all Services provided under the Contract has expired."
- 9.4. The following shall replace clause 16.4 of the Conditions in relation to the Broadband service only: "SMARTTECH may terminate the Contract and all Broadband services provided there under at any time by giving not less than 30 days prior written notice to the Customer."