

EQUIPMENT INSTALLATION TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In these terms and conditions, the following definitions apply:

- (a) **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
 - (b) **Charges** means the charges payable by the Customer for the Services, as set out in the Commercial Terms.
 - (c) **Commercial Terms** means the cover sheet to these terms and conditions titled 'Equipment Installation' which sets out the commercial terms of the Equipment Installation Agreement.
 - (d) **Customer** means the customer named in the Commercial Terms.
 - (e) **Equipment** means the equipment listed in the section titled 'Equipment Installation' of the Commercial Terms.
 - (f) **Equipment Installation Agreement** means the contract between K5 and the Customer for the installation of Equipment in accordance with these terms and conditions and the Commercial Terms.
 - (g) **Funder** means the person with whom the Customer has entered into a contract to purchase the Equipment from.
 - (h) **Installation Period** has the meaning given to it in clause 3.3.
 - (i) **K5** means K5 Communications Limited, a company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
 - (j) **Services** the installation services more particularly described in clause 3.2 below.
- (a) if the reported issue is found by K5 to have resulted from it not having provided the Services in accordance with these terms and conditions then K5 shall resolve the issue promptly at no further cost to the Customer;
 - (b) if the reported issue is found by K5 to be attributable to a fault or defect in the Customer's pre-existing equipment or wiring then it shall be the Customer's responsibility to rectify the issue. For certain issues K5 may, at its discretion, offer to assist with remedying the issue in consideration for the Customer paying an additional charge (which the parties will agree in writing);
 - (c) if the reported issue is found by K5 to be attributable to a fault or defect with the Equipment itself then:
 - (i) if the Customer has entered into a Maintenance Agreement with K5 then the issue shall be rectified under the terms of the Maintenance Agreement; or
 - (ii) if the Customer has purchased the affected Equipment directly from K5 then the issue shall be rectified under K5's Terms and Conditions of Sale; or
 - (iii) in all other cases, the Customer shall be required to contact the supplier or manufacturer to resolve the issue and:
 - (1) K5 shall have no further responsibilities under the Equipment Installation Agreement for that Equipment;
 - (2) the Services shall be deemed to have been performed in full and the Equipment Installation Agreement shall come to an end;
 - (3) K5 may, at its discretion, offer to assist with remedying the issue in consideration for the Customer paying an additional charge (which the parties will agree in writing); and
 - (4) if additional installation services are requested of K5 after the Equipment fault or defect is rectified then K5 reserves the right to charge its then-current charges for carrying out such work (which the parties will agree in writing).

2 BASIS OF CONTRACT AND DURATION

2.1 The Commercial Terms are a quotation by K5 to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Equipment Installation Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.

2.2 The Equipment Installation Agreement continues, unless terminated earlier in accordance with these terms and conditions, until the Services have been accepted or deemed accepted in accordance with clause 3.6.

2.3 These terms and conditions (which incorporate the Commercial Terms) apply to the Equipment Installation Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.

3 SERVICES

3.1 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Charges, K5 will make reasonable endeavours to provide the Services from:

- (a) if the Equipment has been purchased from a Funder, the date K5 receives confirmation from the Funder that the Customer has entered into a contract with the Funder to purchase the Equipment; or
- (b) if the Equipment has been purchased from K5, the date the Equipment is delivered to the Customer or the date K5 takes delivery of the Equipment on the Customer's behalf.

3.2 The Services comprise the installation of the Equipment at the Customer's premises. In particular:

- (a) the Services shall be provided between the hours of 9am and 5.30pm on Business Days only unless the parties have agreed otherwise in writing;
- (b) K5 shall make reasonable endeavours to complete the Services without undue delay during the Installation Period. Installation typically takes 2-3 Business Days but this is not guaranteed; and
- (c) K5 will engage suitably qualified and experienced engineers to ensure that the Services are provided with reasonable care and skill.

3.3 K5 shall contact the Customer to arrange a period during which the Services will be provided (the "Installation Period"). The parties accept that:

- (a) K5 will make commercially reasonable endeavours to complete the Services during that period but the Installation Period is an estimate only and time for performance shall not be of the essence;
- (b) the Services can only be provided once the Equipment has been delivered to the Customer or to K5 on behalf of the Customer; and
- (c) if applicable, the Services can only be provided once third party providers' services have been connected to the Customer's premises (and the Customer accepts that such matters are outside of K5's control).

3.4 K5 may at its absolute discretion agree with the Customer to provide the Services in tranches over multiple Installation Periods if the supply of part of the Equipment is expected to be delayed.

3.5 K5 will confirm in writing when it has completed the Services and that day shall be the "Installation Date". The Customer has 10 days from the Installation Date (the "Reporting Period") to notify K5 of any issues with the installation or Equipment. K5 shall investigate any reported issues promptly in writing and:

3.6 If the Customer confirms within the Reporting Period that it has accepted the installation, or does not report any issues in accordance with clause 3.5 during the Reporting Period, then the Services shall be deemed to have been performed in full and the Equipment Installation Agreement shall come to an end.

3.7 K5 shall ensure that its staff and contractors comply with the Customer's reasonable policies regarding security and health and safety whilst on the Customer's premises.

4 CUSTOMER'S OBLIGATIONS

4.1 The Customer agrees and undertakes:

- (a) to co-operate with K5 in all matters relating to the Services and to provide K5 with such assistance and information as K5 reasonably requests from time to time; and
- (b) to prepare and give access to the Customer's premises according to the reasonable instructions issued by K5 and to ensure that the premises comprise a safe working environment for K5's staff.

5 CHARGES AND PAYMENT

5.1 The Customer agrees to pay the Charges in accordance with these terms and conditions and the Commercial Terms.

5.2 K5 shall invoice the Customer for the Charges following completion of the Services.

5.3 Payment of K5's invoice is due no later than 13 days from the date of the invoice (unless the 13th day after the date of invoice is not a Business Day, in which case the latest day for payment shall be the soonest Business Day after the 13th day);

5.4 All Charges must be paid in full in pounds sterling without deduction, set off or withholding. Payments by BACS must be in cleared funds; and

5.5 If the Customer fails to pay any amount due under these terms and conditions then K5 reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.

5.6 Value added tax (VAT) is payable in addition to all charges levied by K5 unless otherwise specified.

5.7 K5 will submit all invoices via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving K5 60 days' prior written notice.

5.8 K5 reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 5.

5.9 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to K5 within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.

6 LIABILITY

6.1 References to liability in this clause 6 include every kind of liability arising under or in connection with the Equipment Installation Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or

<p>(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).</p> <p>6.3 Subject to clause 6.2, the following types of loss are wholly excluded:</p> <p>(a) loss of profits;</p> <p>(b) loss of sales or business;</p> <p>(c) loss of agreements or contracts;</p> <p>(d) loss of anticipated savings;</p> <p>(e) loss of use or corruption of software, data or information;</p> <p>(f) loss of or damage to goodwill;</p> <p>(g) indirect or consequential loss; and</p> <p>(h) losses arising from breaches of the Customer's security systems which are not attributable to K5's negligence or breach of duty.</p> <p>6.4 Subject to clauses 6.2 and 6.3, K5's total liability to the Customer under the Equipment Installation Agreement shall not exceed £100,000 (one hundred thousand pounds) in aggregate.</p> <p>6.5 Subject to clauses 6.2, K5 shall not be liable to the Customer for any breach of or delay in performing K5's obligations under the Equipment Installation Agreement which results from the Customer's breach of its obligations under these terms and conditions.</p> <p>7 FORCE MAJEURE</p> <p>7.1 Neither party shall be in breach of the Equipment Installation Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:</p> <p>(a) the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and</p> <p>(b) if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.</p> <p>8 TERMINATION</p> <p>8.1 Without affecting any other right or remedies available to it, either party may terminate the Equipment Installation Agreement by giving 14 days' written notice if:</p> <p>(a) the other party fails to pay any amount due under the Equipment Installation Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;</p> <p>(b) the other party commits a material breach of any other term of the Equipment Installation Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of K5's breach) 60 days after being notified in writing to do so;</p> <p>(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;</p> <p>(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;</p> <p>(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;</p> <p>(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;</p> <p>(g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);</p> <p>(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;</p> <p>(i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;</p> <p>(j) the other party (being an individual) is the subject of a bankruptcy petition, application or order;</p> <p>(k) 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 the other party's assets and such attachment or process is not discharged within 14 days;</p> <p>(l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (c) to clause 8.1(k) (inclusive);</p> <p>(m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.</p> <p>8.2 K5 may additionally terminate the Equipment Installation Agreement immediately upon notice if K5 determines that any information provided by the Customer is false or misleading.</p>	<p>8.3</p> <p>9</p> <p>9.1</p> <p>9.2</p> <p>10</p> <p>10.1</p> <p>11</p> <p>11.1</p> <p>11.2</p> <p>11.3</p> <p>12</p> <p>12.1</p> <p>12.2</p> <p>12.3</p> <p>12.4</p> <p>12.5</p> <p>12.6</p>	<p>K5 may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Equipment Installation Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.</p> <p>INDEMNITY</p> <p>The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:</p> <p>(a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Equipment Installation Agreement;</p> <p>(b) the death or injury of any K5's staff or contractors caused by the negligence or wilful misconduct of the Customer; or</p> <p>(c) the enforcement of the Equipment Installation Agreement,</p> <p>and the Customer shall reimburse K5 all amounts payable under this clause immediately on demand.</p> <p>DATA PROTECTION</p> <p>K5 processes personal data in accordance with its Privacy Policy which is accessible from www.K5communications.co.uk/privacy-policy.</p> <p>NOTICES</p> <p>Any notice given to a party under or in connection with the Equipment Installation Agreement shall be in writing and shall be:</p> <p>(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or</p> <p>(b) sent by email to:</p> <p>(i) K5 at info@K5communications.co.uk and</p> <p>(ii) the Customer at the email address specified in in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.</p> <p>Any notice shall be deemed to have been received:</p> <p>(a) if delivered by hand, at the time the notice is left at the proper address;</p> <p>(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or</p> <p>(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.</p> <p>This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.</p> <p>GENERAL</p> <p>Interpretation.</p> <p>(a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.</p> <p>(b) A reference to "writing" or "written" includes email unless otherwise stated.</p> <p>(c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.</p> <p>(d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.</p> <p>Complaints. For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.K5communications.co.uk/complaints-procedure</p> <p>Copies of the contract. K5 will only provide copies of the Equipment Installation Agreement to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.</p> <p>Assignment.</p> <p>(a) K5 may at any time assign its rights under the Equipment Installation Agreement to any third party.</p> <p>(b) The Customer may not transfer or otherwise deal with its rights under the Equipment Installation Agreement without K5's prior written consent. K5 may, at its absolute discretion, agree to the Equipment Installation Agreement being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.</p> <p>(c) K5's acceptance of payment under the Equipment Installation Agreement from a third party the Customer does not constitute its agreement to a variation or novation of the agreement.</p> <p>Variation. No variation of the Equipment Installation Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).</p> <p>Severance. If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.</p>
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- 12.7 **Waiver.** No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.8 **Entire Agreement.**
- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Equipment Installation Agreement.
- 12.9 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.10 **Time for payment.** Time is of the essence for the payment of monies by the Customer.
- 12.11 **Third party rights.** The Equipment Installation Agreement does not give rise to any rights under the Maintenance Agreements (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 12.12 **Governing law.** The Equipment Installation Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Equipment Installation Agreement or its subject matter or formation.

TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

- 1.1 In these terms and conditions, the following definitions apply:
- 1.2 **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.3 **Commercial Terms** means (as applicable): (a) the cover sheet to these terms and conditions titled "Order of Equipment Directly from K5" which sets out the commercial terms of the Contract; or (b) the ad hoc written quotation for the supply of goods provided by K5 to the Customer.
- 1.4 **Force Majeure Event** means an event, circumstance or cause beyond a party's reasonable control.
- 1.5 **Customer** means the customer named in the Commercial Terms.
- 1.6 **Goods** means the goods listed in the Commercial Terms.
- 1.7 **K5** means K5 Communications Limited, a company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- 1.8 **Contract** means the contract between K5 and the Customer for the supply of the Goods in accordance with these terms and conditions and the Commercial Terms.
- 1.9 **Specification** means any specification for the Goods that is agreed in writing by the Customer and K5.

2 BASIS OF CONTRACT

- 2.1 The Commercial Terms are a quotation by K5 to supply the Goods in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Contract will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.
- 2.2 These terms and conditions (which incorporate the Commercial Terms) apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.
- 2.3 The Customer is responsible for ensuring that the Commercial Terms and any applicable Specification are complete and accurate.
- 2.4 Any samples, drawings, descriptive matter or advertising produced by K5 and any descriptions or illustrations contained in K5's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. Likewise, any images of the Goods in the Commercial Terms are illustrative only and do not form part of the Contract unless K5 expressly confirms so in writing.

3 GOODS

- 3.1 The Goods are described in the Commercial Terms, as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by K5 in connection with any claim made against K5 for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with K5's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 K5 reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and K5 shall notify the Customer in any such event.

4 DELIVERY

- 4.1 K5 shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that identifies K5 as the sender and the Customer as the recipient (including the addresses for both parties) and sets out the details of the Goods contained in that delivery. If the Goods are being delivered by instalments then the delivery note will state the outstanding balance of Goods remaining to be delivered; and
- (b) if K5 requires the Customer to return any packaging materials to K5, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as K5 shall reasonably request. Returns of packaging materials shall be at K5's expense.
- 4.2 K5 shall deliver the Goods to the location set out in the Commercial Terms or such other location as the parties may agree ("**Delivery Location**") at any time after K5 notifies the Customer that the Goods are ready.
- 4.3 If K5 is to install the Goods for the Customer under the terms of a separate Equipment Installation Agreement then, unless agreed otherwise in writing, the Delivery Location shall be the Customer's premises and K5 shall deliver the Goods when K5 commences their installation.
- 4.4 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. K5 shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide K5 with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If K5 fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. K5 shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide K5 with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to take delivery of the Goods within three Business Days of K5 notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or K5's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which K5 notified the Customer that the Goods were ready; and

(b) K5 shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If ten Business Days after the day on which K5 notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, K5 may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 K5 may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY

5.1 K5 warrants that on delivery the Goods shall:

(a) conform in all material respects with their description and any applicable Specification; and

(b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.4, if:

(a) the Customer gives notice in writing to K5 within 14 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) K5 is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by K5) returns such Goods to K5's place of business at the Customer's cost,

5.3 K5 shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 K5 shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow K5's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of K5 following any drawing, design or specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of K5;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from their description and/or (if applicable) the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, K5 shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by K5.

6 TITLE AND RISK

6.1 The title and risk in the Goods shall pass to the Customer on completion of delivery.

7 PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Commercial Terms, or, if no price is quoted, the price set out in K5's published price list in force as at the date of delivery.

7.2 K5 may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond K5's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give K5 adequate or accurate information or instructions.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax ("VAT"), which the Customer shall additionally be liable to pay to K5 at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 K5 may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by K5:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by K5 and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by K5.
- 7.6 If the Customer fails to make a payment due to K5 under the Contract by the due date, then, without limiting K5's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8 LIMITATION OF LIABILITY**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 8.3 Subject to clause 8.2, K5's total liability to the Customer shall not exceed the price paid and payable for the Goods.
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.
- 8.5 This clause 8 shall survive termination of the Contract.
- 9 TERMINATION**
- 9.1 Without limiting its other rights or remedies, K5 may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, K5 may suspend provision of the Goods under the Contract or any other contract between the Customer and K5 if the Customer becomes subject to any of the events listed in clause (b) to clause (d), or K5 reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, K5 may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to K5 all of K5's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, K5 shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10 FORCE MAJEURE

- 10.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

11 INDEMNITY

- 11.1 The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:

- (a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Contract;
- (b) the enforcement of the Contract,
- 11.2 and the Customer shall reimburse K5 all amounts payable under this clause immediately on demand.

12 DATA PROTECTION

- 12.1 K5 processes personal data in accordance with its Privacy Policy which is accessible from <https://K5comms.co.uk/privacy-policy>.

13 NOTICES

- 13.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
- (i) K5 at info@K5comms.co.uk; and
- (ii) the Customer at the email address specified in in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.

- 13.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 13.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14 GENERAL

14.1 Interpretation.

- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to "writing" or "written" includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 14.2 **Complaints.** For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.K5comms.co.uk/complaints-procedure.

- 14.3 **Copies of the Contract.** K5 will only provide copies of the Contract to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.

14.4 Assignment.

- (a) K5 may at any time assign its rights under the Contract to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Contract without K5's prior written consent. K5 may, at its absolute discretion, agree to the Contract being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.
- (c) K5's acceptance of payment under the Contract from a third party on behalf of the Customer does not constitute its agreement to a variation or novation of the Contract.

- 14.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 14.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 14.7 **Waiver.** No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 **Entire Agreement.**
- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.9 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- 14.10 **Time for payment.** Time is of the essence for the payment of monies by the Customer.
- 14.11 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 14.12 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

MAINTENANCE TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In these terms and conditions, the following definitions apply:

- (a) **Annual Service Charge** means the annual charge for the Services, as specified in the Commercial Terms and subject to variation from time to time in accordance with these terms and conditions.
- (b) **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (c) **Charges** means the charges payable by the Customer for the Services. The Charges comprise the Annual Service charge plus any other charges specified by these terms and conditions.
- (d) **Commencement Date** means the estimated date for the commencement of the Services, as specified in the Commercial Terms.
- (e) **Commercial Terms** means the cover sheet to these terms and conditions titled Maintenance which sets out the commercial terms of the Maintenance Agreement.
- (f) **Customer** means the customer named in the Commercial Terms.
- (g) **Extended Term** has the meaning given in clause 2.3.
- (h) **Maintenance Agreement** the contract between K5 and the Customer for the supply of the Services in accordance with these terms and conditions and the Commercial Terms.
- (i) **Minimum Term** means the minimum term of the Maintenance Agreement, as specified in the Commercial Terms.
- (j) **K5** means K5 Communications Limited, a company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- (k) **Previously Paid Termination Charges** means the early termination charges paid by K5 on behalf of the Customer to the Customer's previous provider of maintenance services, at any time before or after the Commencement Date.
- (l) **Services** the maintenance and services more particularly described in clause 3.1 below.
- (m) **Support Hours** means 9.00am to 5.00pm on Business Days.
- (n) **Supported Equipment** means the equipment covered by the Services, as listed in the Commercial Terms and as may be amended from time to time under clause 3.1(b). The Supported Equipment includes in each instance all internal cabling as well as the network test termination point or other demarcation point.

2 BASIS OF CONTRACT AND TERM

- 2.1 The Commercial Terms are a quotation by K5 to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Maintenance Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.
- 2.2 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Charges, K5 will make reasonable endeavours to provide the Services from the Commencement Date. Both parties acknowledge that:
 - (a) the Commencement Date is an estimate only and that time shall not be of the essence; and
 - (b) the Services can only be provided once the other contracts for services between the Customer and K5 have commenced. Therefore K5 reserves the right, by giving notice to the Customer, to delay the Commencement Date pending the commencement of those other Services.
- 2.3 The Maintenance Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until the end of the Minimum Term at which point the Maintenance Agreement shall automatically extend for successive periods of 24 months (each an "Extended Term"). If either party gives written notice to the other no later than 90 days before the end of (as applicable) the Minimum Term or current Extended Term then the Maintenance Agreement will terminate at the end of (as applicable) the Minimum Term or the current Extended Term.
- 2.4 When the Maintenance Agreement renews for an Extended Term in accordance with clause 2.2(a), these terms and conditions shall be deemed to have been replaced by K5's latest terms and conditions (published at <https://k5communications.co.uk/terms-and-conditions> with effect from the start of that Extended Term.
- 2.5 These terms and conditions (which incorporate the Commercial Terms) apply to the Maintenance Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.
- 2.6 If K5 has agreed to pay the Customer's early termination charges for its previous provider(s) of the Services, K5 will only pay such amounts that are notified to it no later than 12 months after the Commencement Date.

3 SERVICES

- 3.1 The Services comprise the provision of maintenance and support services for the Supported Equipment via a ticketed help desk. In particular:
 - (a) the Services are provided during Support Hours only. Enhanced (out of hours) support may be arranged by separate agreement for an additional Charge;
 - (b) the Services are only provided for the Supported Equipment. K5 is not obliged to provide the Services for any other equipment. At its absolute discretion, K5 may offer to provide the Services in relation to equipment other than the Supported Equipment on such terms, and subject to such additional Charges, as K5 advises in writing;
 - (c) the Customer may request in writing for equipment to be added or removed from the list of Supported Equipment. K5 has discretion whether to agree to such requests. The Customer accepts that changes to the Supported Equipment may impact upon the Charges;
 - (d) K5 will not provide the Services in any of the circumstances listed in clause 3.2 below;
 - (e) K5 will engage suitably qualified engineers to provide the Services; and
 - (f) requests for support must be submitted in accordance with clause 3.4.
- 3.2 K5 is not obliged to provide the Services in any of the following circumstances and K5 accepts no obligations or liability whatsoever in respect of the same:
 - (a) the reported defect or error has resulted from:

- (i) wilful damage to or other misuse of the equipment;
 - (ii) removal of the equipment from the premises it was installed at;
 - (iii) negligent use of the equipment or storage of the equipment in abnormal conditions;
 - (iv) failure to follow K5's or the manufacturer's instructions in relation to the use or storage of the equipment;
 - (v) the adjustment, alteration or repair of the equipment by the Customer or by a third party without K5's written approval;
 - (vi) flood, fire, lightning strike (or any other act of God), collapse of buildings, explosion or other incident, war, sabotage, terrorism, civil disturbance or governmental action, import regulations or embargoes, interruption or failure of a utility service (including the Customer's internet service); or
 - (vii) the Customer delaying in, or failing to, repair the affected equipment in accordance with K5 or the manufacturer's instructions;
 - (b) the defect or error is a result of the unavailability of, or errors with, the underlying network (e.g. a lack of internet connectivity for a router resulting from the internet supplier's network being down). K5 may, at its discretion, contact the Customer's internet or network services provider on the Customer's behalf to assist with finding a resolution but any such assistance shall be performed as a gesture of goodwill and K5 shall have no liability to the Customer in relation to the same; and
 - (c) the equipment does not meet the Customer's specifications or is not fit for the Customer's intended purpose but it is otherwise not faulty.
- 3.3 At its absolute discretion, upon determining that a fault has been caused by one of the circumstances listed in clause 3.2 K5 may nevertheless offer to assist the Customer with rectifying the fault subject to the Customer paying K5's then-current charges for out-of-scope assistance. This may include the re-programming of equipment following unauthorised changes made by the Customer's staff or any third party.
- (a) Requesting and receiving the Services
- 3.4 The Customer shall request support by email to support@K5comms.co.uk or by telephone call to 0330 053 5555. The request for support must include:
- (a) the name, contact email address, contact telephone number and organisation of the person making the request; and
 - (b) the nature of the fault or, if the Customer is making a request to set up Supported Equipment, details of the work to be carried out.
- 3.5 Upon receipt of a support request which complies with clause 3.4, K5 shall assign the issue a priority based on its severity and urgency. Based on its priority, K5 will endeavour to assign an engineer and respond to the issue as set out below. All time periods are within Support Hours unless the parties have agreed to provide enhanced (out-of-hours) support by separate agreement:
- (a) Priority 1 - Urgent priority issues. K5 will endeavour to assign an engineer and respond to these issues within 1 hour.
 - (b) Priority 2 - High priority issues. K5 will endeavour to assign an engineer and respond to these issues within 2 hours.
 - (c) Priority 3 - Medium priority issues. K5 will endeavour to assign an engineer and respond to these issues within 8 hours.
 - (d) Priority 4 - Low priority issues and change requests. K5 will endeavour to assign an engineer and respond to these issues within 24 hours.
 - (e) Priority 5 - Questions, training and setup requests. K5 will endeavour to assign an engineer and respond to these issues within 48 hours.
- 3.6 K5 does not guarantee resolution times but will make commercially reasonable endeavours to resolve Priority 1 and Priority 2 issues without undue delay and will make commercially reasonable endeavours to resolve Priority 3, 4 add 5 issues promptly.
- 3.7 K5 does not warrant that it can resolve all defects. If K5 is unable to repair or resolve a defect having made reasonable endeavours to do so then K5 shall have satisfied its obligations under this agreement. K5 shall make reasonable endeavours to contact the manufacturer or supplier of the Supported equipment to arrange further assistance where appropriate.
- 3.8 Where practicable, K5 shall endeavour to diagnose issues remotely although site visits may be required.
- 3.9 If the Supported Equipment needs to be repaired then:
- (a) the Customer shall return the equipment to be repaired to K5 (or a third party whose details are confirmed by K5) at the Customer's own expense;
 - (b) if the equipment to be repaired is within the manufacturer's or supplier's warranty then K5 shall make reasonable endeavours to arrange the repair without further charge to the Customer. This may involve returning the equipment to the manufacturer or supplier for repair;
 - (c) if the equipment to be repaired is not within the manufacturer's or supplier's warranty then K5 shall notify the Customer and the parties shall agree next steps, which may involve the payment by the Customer of third party repair charges.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer agrees and undertakes:
 - (a) to co-operate with K5 in all matters relating to the Services and to provide K5 with such assistance and information as K5 reasonably requests from time to time; and
 - (b) to prepare and give access to the Customer's premises according to the reasonable instructions issued by K5 and to ensure that the premises comprise a safe working environment for K5's staff.

5 CHARGES

- 5.1 The Customer agrees to pay the Charges in accordance with these terms and conditions and the Commercial Terms.
- 5.2 The amount of the Annual Service Charge is set out in the Commercial Terms and may be amended by mutual agreement of the parties in writing or by operation of these terms and conditions.
- 5.3 K5 may increase the Charges on 30 days' notice, subject to the following restrictions:

- (a) K5 may not increase the Annual Service Charge within the first 12 months of the Maintenance Agreement (calculated from when the contract is entered into); and
- (b) K5 may not increase the Annual Service Charge by more than 5% over a 12 month period and may not increase the Annual Service Charge more frequently than once in any 12 month period.
- 5.4 If, more than twice in a calendar month, the Customer erroneously reports a fault (i.e. in circumstances where no fault can be identified) or requests support in any of the circumstances listed in clause 3.2, K5 may charge the Customer its then-current charges for out-of-scope assistance for the time and resources spent responding to those requests.
- 6 **PAYMENT**
- 6.1 K5 shall invoice the Customer monthly in advance.
- 6.2 Payment of K5's invoice is due no later than 14 days from the date of the invoice.
- 6.3 Payment must be made by Direct Debit unless K5 has expressly agreed in writing to accept payment by another method. K5 reserves the right to charge its then-current admin fee (available on request) as a condition of accepting payment other than by direct debit.
- 6.4 All Charges must be paid in full in pounds sterling without deduction, set off or withholding. If accepted by K5, payments by BACS must be in cleared funds.
- 6.5 K5 reserves the right to amend the date and frequency of its invoices upon 60 days' written notice to the Customer.
- 6.6 K5 reserves the right to submit ad hoc invoices, in advance of supply, for products or services not covered by the Annual Service Charge. Such invoices are payable immediately on demand.
- 6.7 All invoices will be submitted via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving K5 60 days' prior written notice.
- 6.8 Value added tax (VAT) is payable in addition to all charges levied by K5 unless otherwise specified.
- 6.9 K5 reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 6.
- 6.10 If the Customer fails to pay any amount due under these terms and conditions then K5 reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.
- 6.11 K5 reserves the right to vary the Customer's payment terms upon 30 days' notice in writing if:
- (a) the Customer fails to pay any of K5's invoices in accordance with these terms and conditions; or
- (b) K5 reasonably determines that the Customer is at risk of failing to pay K5's invoices on time due to a deterioration or anticipated deterioration of its financial position
- 6.12 K5 reserves the right to charge its then-current administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the direct debit due date.
- 6.13 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to K5 within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.
- 7 **LIABILITY**
- 7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Maintenance Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Subject to clause 7.2, the following types of loss are wholly excluded:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) indirect or consequential loss; and
- (h) losses arising from breaches of the Customer's security systems which are not attributable to K5's negligence or breach of duty.
- 7.4 Subject to clauses 7.2 and 7.3, K5's total liability to the Customer shall not exceed the greater of:
- (a) the Charges which would be payable in the 12 months following the Commencement Date; and
- (b) the Charges paid by the Customer in the 36 months prior to the breach or the first breach of a series of connected breaches.
- 7.5 Subject to clauses 7.2, K5 shall not be liable to the Customer for any breach of or delay in performing K5's obligations under the Maintenance Agreement which results from the Customer's breach of its obligations under these terms and conditions.
- 8 **FORCE MAJEURE**
- 8.1 Neither party shall be in breach of the Maintenance Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:
- (a) the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and
- (b) if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.

- 9 **SUSPENSION**
- 9.1 K5 may without liability to the Customer and without affecting its other rights and remedies: (a) suspend all or any of the Services; and/or (b) suspend any other services provided to the Customer by K5 (whether under the Maintenance Agreement or otherwise) if:
- (a) the Customer materially breaches any of these terms and conditions (including but not limited to a failure to pay any charges when due);
- (b) the Customer becomes subject to any of the circumstances set out in clause 10.3(c) to clause 10.3(m) (inclusive); or
- (c) the relevant system(s) need to be suspended to facilitate the maintenance, repair or upgrade of any of K5's systems and/or services (provided K5 shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances and to avoid suspending the Services during normal business hours);
- (d) K5 is dealing with an actual or suspected security breach, virus, or attack whereby K5 cannot reasonably address that threat without suspending the Services (or parts thereof) and in which case K5 shall endeavour to minimise the interruption to the Customer; or
- (e) it is necessary because of an emergency or because K5 has a legal obligation to do so.
- 9.2 If K5 suspends the Services under clause 9.1 then the Customer shall nevertheless remain liable to pay the Charges.
- 9.3 If K5 suspends the Services under clause 9.1 on the basis that the Customer has not paid an K5 invoice on time then K5 shall notify the Customer of that fact in writing.
- 10 **TERMINATION**
- Termination without cause**
- 10.1 Either party may terminate the Maintenance Agreement without cause in accordance with clause 2.3.
- 10.2 The Customer may additionally terminate the Maintenance Agreement at any time prior to the expiration of the Minimum Term or current Extended Term by giving K5 notice in writing. Termination takes effect, and is conditional upon, the Customer having paid K5 in full on demand:
- (a) all Previously Paid Termination Charges and the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer, plus the amount of any credit paid by K5 to the Customer;
- (b) all Charges incurred up to date of termination; and
- (c) an early termination fee equal to the remaining Charges that would fall due from the date of termination until the expiry of (as applicable) the Minimum Term or current Extended Term.
- Termination for cause**
- 10.3 Without affecting any other right or remedies available to it, either party may terminate the Maintenance Agreement by giving 14 days' written notice if:
- (a) the other party fails to pay any amount due under the Maintenance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Maintenance Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of K5's breach) 60 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- (k) 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 the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (c) to clause 10.3(k) (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.4 K5 may additionally terminate the Maintenance Agreement immediately upon notice if K5 determines that any information provided by the Customer is false or misleading.
- 10.5 K5 may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Maintenance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

- 11 **CONSEQUENCES OF TERMINATION**
- 11.1 On termination of the Maintenance Agreement:
- (a) the Services shall cease;
- (b) K5 shall invoice the Customer for all outstanding charges up to termination plus any charges imposed by Third Party Providers as a result of termination;
- (c) if the Maintenance Agreement was terminated by K5 under clause 10.3 or clause 10.4 prior to the expiration of the Minimum Term then K5 shall invoice the Customer for the following:
- (i) all Previously Paid Termination Charges; and
- (ii) the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer, plus the amount of any credit paid by K5 to the Customer; and
- (d) if the Maintenance Agreement was terminated by K5 under clause 10.3 or clause 10.4 prior to the expiration of the Minimum Term or current Extended Term then K5 shall invoice the Customer the Monthly Charges which would have been payable for the unexpired part of the Minimum Term or Extended Term,
- 11.2 and the Customer shall pay all of K5's invoices for such amounts immediately upon receipt, without set off or withholding, and in accordance with the payment instructions set out on them.
- 12 **INDEMNITY**
- 12.1 The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:
- (a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Maintenance Agreement;
- (b) the death or injury of any of K5's staff or contractors caused by the negligence or wilful misconduct of the Customer; or
- (c) the enforcement of the Maintenance Agreement,
- 12.2 and the Customer shall reimburse K5 all amounts payable under this clause immediately on demand.
- 13 **DATA PROTECTION**
- 13.1 K5 processes personal data in accordance with its Privacy Policy which is accessible from <https://K5communications.co.uk/privacy-policy>.
- 14 **NOTICES**
- 14.1 Any notice given to a party under or in connection with the Maintenance Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
- (i) K5 at info@K5communications.co.uk; and
- (ii) the Customer at the email address specified in in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.
- 14.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15 **GENERAL**
- 15.1 **Interpretation.**
- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to "writing" or "written" includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 15.2 **Complaints.** For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.K5communications.co.uk/complaints-procedure.
- 15.3 **Copies of the contract.** K5 will only provide copies of the Maintenance Agreement to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.
- 15.4 **Assignment.**
- (a) K5 may at any time assign its rights under the Maintenance Agreement to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Maintenance Agreement without K5's prior written consent. K5 may, at its absolute discretion, agree to the Maintenance Agreement being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.
- (c) K5's acceptance of payment under the Maintenance Agreement from a third party on behalf of the Customer does not constitute its agreement to a variation or novation of the agreement.
- 15.5 **Variation.** No variation of the Maintenance Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this

clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 **Waiver.** No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.8 **Entire Agreement.**

(a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Maintenance Agreement.

15.9 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party

15.10 **Time for payment.** Time is of the essence for the payment of monies by the Customer.

15.11 **Third party rights.** The Maintenance Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

15.12 **Governing law.** The Maintenance Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Maintenance Agreement or its subject matter or formation.

MOBILE TERMS AND CONDITIONS

1 DEFINITIONS

- 1.1 In these terms and conditions, the following definitions apply:
- 1.2 **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.3 **Call Charges** means a predetermined charge unit of time, costed at the rates set out in the Tariff Sheets.
- 1.4 **Commercial Terms** means the cover sheet to these terms and conditions titled 'Mobile' which sets out the commercial terms of the Mobile Agreement.
- 1.5 **Connection Date** means the date that the Devices, or substantially all of the Devices, are connected to the Network, as specified in the Commercial Terms (subject to amendment in writing by K5 from time to time).
- 1.6 **Credit Limit** means the monthly financial limit for Usage Charges, as specified in the Commercial Terms.
- 1.7 **Customer** means the customer named in the Commercial Terms.
- 1.8 **Data Charges** means the pre-determined charge per megabyte of data costed at the rates set out in the Tariff Sheets.
- 1.9 **Device** means each mobile phone (including iPhones and Android mobile phones), BlackBerry device, other handheld device or SIM Card in relation to which K5 is providing the Services. The Devices are listed in the Commercial Terms and may be varied from time to time by agreement between the parties in accordance with clause 3.4.
- 1.10 **Extended Term** has the meaning given in clause 2.3.
- 1.11 **Minimum Term** means the minimum term of the Mobile Agreement, as specified in the Commercial Terms.
- 1.12 **Mobile Agreement** means the contract between K5 and the Customer for the supply of the Services in accordance with these terms and conditions and the Commercial Terms.
- 1.13 **Monthly Charges** means the monthly amount payable by the Customer for receipt of the Services (excluding the Usage Charges). The Monthly Charges applicable on the effective date of the Contract is specified in the Commercial Terms and may be updated from time to time in accordance with these terms and conditions.
- 1.14 **K5** means K5 Communications Limited a limited company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- 1.15 **Network** means the telecommunications network which K5 connects the Devices to in order to receive the Services.
- 1.16 **Previously Paid Termination Charges** means the early termination charges paid by K5 on behalf of the Customer to the Customer's previous mobile provider at any time before or after the Commencement Date.
- 1.17 **Roaming Charges** means (as applicable) Call Charges and Data Charges made or received in a country outside of the UK. Subject to clause 3.7, the amount of the Roaming Charges, and the affected countries, are set out in the Tariff Sheets.
- 1.18 **Services** means the ability to make and receive calls and (handset permitting) receive voice and data services by means of the Devices being connected to the Network, as more particularly described in the Commercial Terms.
- 1.19 **SIM Card** means the "Customer Identity Module" which is a unique card containing network information which, when used with a compatible mobile phone, BlackBerry or other device, enables access to the Services.
- 1.20 **Tariff Sheets** means K5's current tariff price list from time to time which itemises the Call Charges, Data Charges, Roaming Charges and any other usage-based charges applicable to the Services. K5 will provide a copy of the Tariff Sheets on request.
- 1.21 **Usage Charges** means the Call Charges, Data Charges and Roaming Charges.

2 BASIS OF CONTRACT AND TERM

- 2.1 The Commercial Terms are a quotation by K5 to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Mobile Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.
- 2.2 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Monthly Charges, K5 will make reasonable endeavours to connect the Devices to the Network and to provide the Services from the Connection Date. Both parties acknowledge that the Connection Date is an estimate only and that time shall not be of the essence.
- 2.3 Subject to clause 2.4 below, the Mobile Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until the end of the Minimum Term at which point the Mobile Agreement shall automatically extend for successive periods of 24 months (each an "Extended Term"). If either party gives written notice to the other no later than 30 days before the end of (as applicable) the Minimum Term or the current Extended Term then the Mobile Agreement will terminate at the end of (as applicable) the Minimum Term or the current Extended Term.
- 2.4 In the event the Customer has ten or fewer employees, clause 2.3 shall not apply and instead the Mobile Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until either party gives 30 days' written notice to the other party to terminate the Mobile Agreement, such notice to take effect at any time after the Minimum Term.
- 2.5 When the Mobile Agreement renews for an Extended Term in accordance with clause 2.3, these terms and conditions shall be deemed to have been replaced by K5's latest terms and conditions (published at <https://k5communications.co.uk/terms-and-conditions>) with effect from the start of that Extended Term.
- 2.6 These terms and conditions and the Commercial Terms apply to the Mobile Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.

3 SERVICES

- 3.1 K5 shall make commercially reasonable endeavours to ensure continuity of the Services from the Connection Date but, as the Network is not operated by it, K5 does not give any warranties regarding the availability of the Services, the guaranteed minimum uptime of the Network or the suitability of the Services for the Customer's requirements. Except as expressly provided

in these terms and conditions, all warranties, conditions or other terms (whether express or implied) as to the quality of the Services or their fitness for any particular purpose are hereby excluded to the fullest extent permitted by law.

- 3.2 Calls by the Customer to certain telephone numbers (principally international numbers, satellite phone numbers, and premium rate services such as directory enquiries) are subject to additional Call Charges which are payable in addition to the Monthly Charges. A full list is available from K5 on request. K5 reserves the right to bar access to such numbers at its discretion (for example, if K5 believes that fraudulent calls are being placed to such numbers).
- 3.3 On behalf of the Network provider, K5 reserves the right to deallocate (i.e. claw-back) telephone numbers issued to the Customer. K5 will only exercise this right to comply with a request from the Network provider. In K5's experience, such requests are rare.
- 3.4 The Customer may add or remove Devices by contacting K5 in writing. Such changes only take effect once confirmed in writing by K5 and may be conditional, if adding new Devices, upon the Customer agreeing to incur additional charges.
- 3.5 Following a request from the Customer, K5 may at its absolute discretion agree to transfer the Customer from the Network to another network provider's network which is offered by K5. The transfer is conditional upon the Customer agreeing to the revised Monthly Charges and Usage Charges which apply to the new network and to the Customer committing to a minimum contractual term of 24 months under the new network.
- 3.6 Provided it gives 30 days' written notice to the Customer, K5 may transfer the Customer from the Network to another network provider's network which is offered by K5. If K5 exercises this right then the Customer's Monthly Charges, Usage Charges and minimum contract term will be unaffected.
- 3.7 K5 will make reasonable endeavours to ensure that the Tariff Sheets are accurate and up to date. However, the Customer accepts that Roaming Charges are set by third party network providers with whom K5 does not have a direct business relationship and therefore the network provider may change its charges without K5 being made aware. As such, the Customer also 'accepts':
- (a) that it is solely responsible for ensuring its users carefully read all roaming notifications sent to the Devices by third party network providers operating outside of the UK; and
- (b) that the charges outlined in such notifications shall be binding upon the Customer even if they conflict with the Tariff Sheets.
- 3.8 Unless expressly stated in these terms and conditions or the Commercial Terms, K5 assumes no responsibility or liability for the Devices, their functionality or any hardware or software defects/issues affecting the Devices.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer must:
- (a) promptly provide K5 with all reasonably requested cooperation in relation to the Devices and Services;
- (b) comply with the Network provider's policies and terms and conditions (to the extent they apply to the Customer) from time to time. Such policies are available from the Network provider's website;
- (c) comply with all applicable laws which govern its use of the Devices, Network and Services;
- (d) not use or permit others to use the Devices or Services for any improper or immoral purpose or in a manner which may (in K5's reasonably opinion) impair the performance or availability of the Services or Network;
- (e) only use the Devices supplied under the agreement which are approved for use with the Network; and
- (f) notify K5 immediately in writing if a Device is stolen or lost.
- 4.2 The Customer understands that the Services may from time to time be adversely affected by local geography, topography and/or atmospheric conditions and/or other causes of interference which are outside of K5's control and that, subject to clause 7.2, K5 shall have no liability for such matters.

5 CHARGES

- 5.1 The Customer agrees to pay the Call Charges, Data Charges, Roaming Charges and any other usage-based charges applicable to the Services in accordance with these terms and conditions and the Commercial Terms.
- 5.2 K5 may, on 30 days' prior written notice to the Customer, increase the Monthly Charges, Call Charges, Data Charges and/or Roaming Charges in response to one of K5's suppliers (typically the Network provider) increasing its charges.
- 5.3 K5 may additionally increase the Monthly Charges, Call Charges, Data Charges and/or Roaming Charges subject to the following restrictions:
- (a) K5 may not increase any of the charges within the first 12 months of the Mobile Agreement (calculated from when the contract is entered into);
- (b) K5 may not increase any single charge by more than 5% over a 12 month period and no single charge may be increased more than once in any 12 month period; and
- (c) K5 must give at least 30 days' written notice to the Customer of the increase.
- 5.4 K5 reserves the right to amend the Credit Limit from time to time by giving 30 days' written notice to the Customer.
- 5.5 K5 will make reasonable endeavours to notify the Customer once it has reached 50% and then 75% of its monthly data allowance. K5's failure to give such notice shall have no effect on the Customer's obligation to pay the Data Charges.

6 PAYMENT

- 6.1 The Monthly Charges are invoiced monthly in advance whereas the Usage Charges are invoiced monthly in arrears.
- 6.2 With the exception of the first month's charges, the Monthly Charges for the coming month and the Usage Charges for the previous month are invoiced at the same time. If the Services commence partway through K5's monthly billing cycle then the first Monthly Charges calculation will include a pro rata charge for the remainder of the current month, plus next month's Monthly Charge.
- 6.3 Payment of K5's invoice is due no later than 14 days from the date of the invoice.
- 6.4 Payment must be made by Direct Debit unless K5 has expressly agreed in writing to accept payment by another method. K5 reserves the right to charge its then-current admin fee (available on request) as a condition of accepting payment other than by direct debit.

- 6.5 All charges must be paid in full in pounds sterling without deduction, set off or withholding. If accepted by K5, payments by BACS must be in cleared funds.
- 6.6 K5 reserves the right to amend the date and frequency of its invoices upon 60 days' written notice to the Customer.
- 6.7 K5 reserves the right to submit ad hoc invoices for products or services not included within the Monthly Charge or Usage Charges and for Usage Charges in excess of the Credit Limit. Such invoices are payable immediately on demand.
- 6.8 All invoices will be submitted via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving K5 60 days' prior written notice.
- 6.9 Value added tax (VAT) is payable in addition to all charges levied by K5 unless otherwise specified.
- 6.10 K5 reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 6.
- 6.11 During the Term K5 may ask for a deposit as security for payment in respect of additional Services to be provided. The Customer may request the return of any deposit at the expiry of the Minimum Term as stated in the Agreement, but the decision to return any monies prior to termination of the Agreement is at the discretion of K5. K5 reserves the right to set off any deposit against any amounts due and owing by the Customer to K5 (including but not limited to under the Agreement) at any time.
- 6.12 If the Customer fails to pay any amount due under these terms and conditions then K5 reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.
- 6.13 K5 reserves the right to charge its then-current administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the direct debit due date.
- 6.14 K5 reserves the right to vary the Customer's payment terms upon 30 days' notice in writing if:
- the Customer fails to pay any of K5's invoices in accordance with these terms and conditions; or
 - K5 reasonably determines that the Customer is at risk of failing to pay K5's invoices on time due to a deterioration or anticipated deterioration of its financial position.
- 6.15 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to K5 within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.
- 7 LIABILITY**
- 7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Mobile Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Subject to clause 7.2, the following types of loss are wholly excluded:
- loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 7.4 Subject to clauses 7.2 and 7.3, K5's total liability to the Customer shall not exceed the greater of:
- the Monthly Charges which would be payable in the 12 months following the Connection Date; and
 - the Monthly Charges and Usage Charges paid by the Customer in the 36 months prior to the breach or the first breach of a series of connected breaches.
- 7.5 Subject to clauses 7.2, K5 shall not be liable to the Customer for any breach of or delay in performing K5's obligations under the Mobile Agreement which results from the Customer's breach of its obligations under these terms and conditions.
- 8 FORCE MAJEURE**
- 8.1 Neither party shall be in breach of the Mobile Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:
- the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and
 - if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.
- 9 SUSPENSION**
- 9.1 Provided it gives prior written notice to the Customer, K5 may without liability to the Customer and without affecting its other rights and remedies: (a) suspend the Services; (b) disconnect any or all Devices from the Network; and/or (c) suspend any other services provided to the Customer by K5 (whether under the Mobile Agreement or otherwise) if:
- the Customer materially breaches any of these terms and conditions (including but not limited to a failure to pay any charges when due);
 - the Customer becomes subject to any of the circumstances set out in clause 10.4(c) to clause 10.4(m) (inclusive);
 - if the Credit Limit is exceeded;
 - K5 reasonably suspects that the Customer's phone number(s) are being used fraudulently;
 - the relevant system(s) are required for maintenance, repair or upgrade of any of K5's systems and/or services (provided K5 shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances);
 - K5 is dealing with an actual or suspected security breach, virus, or attack whereby K5 cannot reasonably address that threat without suspending the Services (or parts thereof) and in which case K5 shall endeavour to minimise the interruption to the Customer;
- it is necessary because of an emergency or because K5 has a legal obligation to do so; or
 - the Services depend on a Third Party Provider and that Third Party Provider has suspended its services.
- 9.2 If K5 suspends the Services under clause 9.1 then the Customer shall nevertheless remain liable to pay the Monthly Charges and the Usage Charges.
- 9.3 K5 reserves the right to charge a £50.00 plus VAT administrative charge for resuming the Services following a period of suspension for the reasons set out in clause 9.1(a), 9.1(b) or 9.1(c).
- 10 TERMINATION**
- Termination without cause**
- 10.1 Either party may terminate the Mobile Agreement without cause in accordance with clause 2.3.
- 10.2 The Customer may additionally terminate the Mobile Agreement at any time prior to the expiration of the Minimum Term or current Extended Term by giving K5 notice in writing. Termination takes effect, and is conditional upon, the Customer having paid K5 in full:
- all Previously Paid Termination Charges, plus the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer, plus the amount of any promotional credit applied by K5 to the Customer's account which has been expended by the Customer;
 - all Monthly Charges and Usage Charges incurred up to date of termination; and
 - an early termination fee equal to the remaining Charges that would fall due from the date of termination until the expiry of (as applicable) the Minimum Term or current Extended Term.
- 10.3 K5 may additionally terminate the Mobile Agreement at any time by giving 30 days' written notice to the Customer.
- Termination for cause**
- 10.4 Without affecting any other right or remedy available to it, either party may terminate the Mobile Agreement by giving 14 days' written notice if:
- the other party fails to pay any amount due under the Mobile Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - the other party commits a material breach of any other term of the Mobile Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of K5's breach) 60 days after being notified in writing to do so;
 - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - the other party (being an individual) is the subject of a bankruptcy petition, application or order; 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 the other party's assets and such attachment or process is not discharged within 14 days;
 - any event occurs, or proceeding is 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 10.4(c) to clause 10.4(k) (inclusive); or
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.5 K5 may additionally terminate the Mobile Agreement immediately upon notice if:
- K5 determines that any information provided by the Customer is false or misleading; or
 - for any reason, the network provider ceases to operate the Network or otherwise ceases to provide the underlying services necessary for K5 to continue providing the Services in accordance with the Mobile Agreement.
- 10.6 K5 may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Mobile Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 11 CONSEQUENCES OF TERMINATION**
- 11.1 Following termination of the Mobile Agreement:
- K5 shall disconnect the Devices from the Network and the Services shall cease;
 - K5 will use reasonable endeavours to co-operate with any reasonable request from the Customer to transfer any telephone numbers allocated to the Customer hereunder to another service provider provided that the Customer pays K5's reasonable costs and expenses;
 - K5 shall invoice the Customer for all outstanding charges up to termination;
 - if the Mobile Agreement was terminated prior to the expiration of the Minimum Term then K5 shall invoice the Customer for the following unless the Customer has already paid such amounts pursuant to the early termination provisions in clause 10.2:
 - all Previously Paid Termination Charges;

- (ii) the value of all discounts offered by K5 (calculated as the difference between the amount actually paid and K5's list price at the time the Devices were supplied), plus any rebates paid by K5 to the Customer, plus the amount of any promotional credit and hardware fund applied by K5 to the Customer's account which has been expended by the Customer; and
- (e) if the Mobile Agreement was terminated prior to the expiration of (as applicable) the Minimum Term or current Extended Term then K5 shall invoice the Customer for the Monthly Charges which would have been payable for the unexpired part of the Minimum Term or Extended Term,
- 11.2 and the Customer shall pay all of K5's invoices for such amounts immediately upon receipt, without set off or withholding, and in accordance with the payment instructions set out on them.
- 12 **INDEMNITY**
- 12.1 The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:
- (a) the Customer's breach or negligent performance or non-performance of the Mobile Agreement;
- (b) the enforcement of the Mobile Agreement.
- 13 **DATA PROTECTION**
- 13.1 K5 processes personal data in accordance with its Privacy Policy which is accessible from <https://K5communications.co.uk/privacy-policy>.
- 14 **NOTICES**
- 14.1 Any notice given to a party under or in connection with the Mobile Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
- (i) K5 at info@K5comms.co.uk; and
- (ii) the Customer at the email address specified in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.
- 14.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15 **GENERAL**
- 15.1 **Interpretation.**
- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to "writing" or "written" includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 15.2 **Complaints.** For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.K5communications.co.uk/complaints-procedure.
- 15.3 **Copies of the contract.** K5 will only provide copies of the Mobile Agreement to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.
- 15.4 **Assignment.**
- (a) K5 may at any time assign its rights under the Mobile Agreement to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Mobile Agreement without K5's prior written consent. K5 may, at its absolute discretion, agree to the Mobile Agreement being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.
- (c) K5's acceptance of payment under the Mobile Agreement from a third party on behalf of the Customer does not constitute its agreement to a variation or novation of the agreement.
- 15.5 **Variation.** No variation of the Mobile Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.7 **Waiver.** No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16 **ENTIRE AGREEMENT.**
- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Mobile Agreement.
- 16.2 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- 16.3 **Time for payment.** Time is of the essence for the payment of monies by the Customer.
- 16.4 **Third party rights.** The Mobile Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 16.5 **Governing law.** The Mobile Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.6 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Mobile Agreement or its subject matter or formation.

NETWORK LINE RENTAL TERMS AND CONDITIONS

- 1 **DEFINITIONS**
- 1.1 In these terms and conditions, the following definitions apply:
- 1.2 **BT** means BT Group Plc and its group companies and affiliate companies from time to time.
- 1.3 **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.4 **Charges** means the charges payable by the Customer for the Services, as specified in the Commercial Terms and subject to variation from time to time in accordance with these terms and conditions. A "Charge" is the charge payable for a single component of the Services.
- 1.5 **Commercial Terms** means the cover sheet to these terms and conditions titled 'Network Line Rental' which sets out the commercial terms of the Network Line Rental Agreement.
- 1.6 **Customer** means the customer named in the Commercial Terms.
- 1.7 **Customer Equipment** means equipment owned or controlled by the Customer which is not Third Party Equipment.
- 1.8 **Extended Term** has the meaning given in clause 2.3.
- 1.9 **Minimum Term** means the minimum term of the Network Line Rental Agreement, as specified in the Commercial Terms. The Minimum Term commences when each of the Services have commenced.
- 1.10 **K5** means K5 Communications Limited, a company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- 1.11 **Network Line Rental Agreement** means the contract between K5 and the Customer for the supply of the Services in accordance with these terms and conditions and the Commercial Terms.
- 1.12 **Premises** means the place(s) at which K5 agrees to provide the Services.
- 1.13 **Previously Paid Termination Charges** means the early termination charges paid by K5 on behalf of the Customer to the Customer's previous provider(s) of (as applicable) network line rental, broadband, Session Initiation Protocol (SIP) services and/or cloud services, at any time before or after the effective date of the Network Line Rental Agreement.
- 1.14 **Services** means all of the service components listed in the Commercial Terms, which may include network line rental, broadband, SIP services and cloud services, and Support Services. The service components are more particularly described in clause 3.
- 1.15 **Services Failure** has the meaning given to it in clause 4.1.
- 1.16 **Support Services** means the services provided by K5 under clause 4 of these terms and conditions.
- 1.17 **Third Party Provider** means, according to the context, the third party provider(s) of the underlying infrastructure for the Services or a component of the Services.
- 1.18 **Third Party Equipment** means equipment owned or provided by a Third Party Provider or any person other than K5.
- 1.19 **Toll Fraud:** any interference or access to the Customer's private automated branch exchange (PABX) phone system or the Customer's telephone lines and/or the making of calls by any third party utilising the Customer's telephone lines whether fraudulent or otherwise. For the avoidance of doubt, fraudulent activity includes but is not limited to: (i) calls made from the Customer's private branch exchange (PBX) without their knowledge; (ii) calls made utilising the Customer's authentication details; and (iii) calls made from an authenticated IP address belonging to the Customer.
- 2 **BASIS OF CONTRACT AND TERM**
- 2.1 The Commercial Terms are a quotation by K5 to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Network Line Rental Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.
- 2.2 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Charges, K5 will make reasonable endeavours to provide the Services as soon as it is able to, accounting for the fact that one or more Services cannot commence until:
- (a) the relevant Third Party Provider has connected the underlying services;
- (b) the Customer's previous service provider has migrated the provision of the Services to K5; and
- (c) the requisite equipment has been installed and correctly configured.
- 2.3 Subject to clause 2.4 below, the Network Line Rental Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until the end of the Minimum Term at which point the Network Line Rental Agreement shall automatically extend for successive periods of 24 months (each an "Extended Term"). If either party gives written notice to the other no later than 90 days before the end of (as applicable) the Minimum Term or current Extended Term then the Network Line Rental Agreement will terminate at the end of (as applicable) the Minimum Term or the current Extended Term. Alternatively, either party may terminate the individual components of the Services, as listed in clause 3.3, in the same manner pursuant to clause 11.2.
- 2.4 In the event the Customer has ten or fewer employees, clause 2.3 shall not apply and instead the Network Line Rental Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until either party gives 90 days' written notice to the other party to terminate the Network Line Rental Agreement, such notice to take effect at any time after the Minimum Term. Alternatively, either party may terminate the individual components of the Services, as listed in clause 3.3, in the same manner pursuant to clause 11.2.
- 2.5 When the Network Line Rental Agreement renews for an Extended Term in accordance with clause 2.3, these terms and conditions shall be deemed to have been replaced by K5's latest terms and conditions (published at <https://k5communications.co.uk/terms-and-conditions>) with effect from the start of that Extended Term.
- 2.6 These terms and conditions (which incorporate the Commercial Terms) apply to the Network Line Rental Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.
- 2.7 If K5 has agreed to pay the Customer's early termination charges for its previous provider(s) of the Services, K5 will only pay such amounts that are notified to it no later than 12 months from the commencement date of the relevant Service(s).
- 3 **SERVICES**
- 3.1 The Commercial Terms specify which components of the Services the Customer will receive.
- 3.2 K5 will provide the Services, or procure the provision of the Services for the benefit of the Customer, materially in accordance with these terms and conditions.
- 3.3 Unless stated to the contrary in the Commercial Terms, the specifications for the components of the Services are as follows:
- (a) **Line rental:** The provision of the agreed number of UK telephone numbers, each with the facility to make or receive calls from the Premises, plus any related services stipulated in the Commercial Terms, but excluding the supply of hardware (e.g. telephone handsets) and other equipment.
- (b) **Broadband:** The provision of a broadband access line specified in the Commercial Terms that will provide internet connectivity to the Premises, excluding the supply of hardware (e.g. routers). Including (as applicable) DSL/ADSL, fibre, cable, satellite, wireless, and leased lines internet connectivity.
- (c) **SIP services:** The provision of Session Initiation Protocol SIP trunking (to make outgoing and take incoming calls via the broadband for the phone system installed onsite) and all other SIP services specified in the Commercial Terms.
- (d) **Cloud services:** The provision of the cloud services specified in the Commercial Terms, including the provision of multiple hosted lines to make outgoing and take incoming calls via the broadband for the phone system which is based onsite, whereby the equipment is controlled by a central system based off-site in a data centre/cloud.
- (e) **Support Services:** As set out in clause 4 below.
- 3.4 K5 reserves the right to make changes to the Services without notice to the Customer which are necessary to comply with any applicable law or safety requirements, or which otherwise do not materially affect the nature or quality of the Services.
- 3.5 Without prejudice to clause 3.2, K5 does not give any warranties regarding the availability of the Services or the suitability of the Services for the Customer's requirements. Unless expressly stated to the contrary in these terms and conditions, all warranties, conditions or other terms (whether express or implied) as to the quality or performance of the Services, or their fitness for any particular purpose, are hereby excluded to the fullest extent permitted by law.
- Line rental specific terms**
- 3.6 From time to time the Third Party Provider may change the codes or the telephone numbers allocated to the Customer or may otherwise interrupt the Services for operational reasons. Should this occur then all Charges hereunder remain payable and K5 shall not be deemed to have breached these terms.
- 3.7 The line rental component of the Services includes the provision of a UK telephone number which BT will list, along with the Customer's details, in its phone books and directories services. The Customer may contact K5 in relation to changing its directory listing preferences. A notice period may apply for changes to take effect.
- 3.8 All telephone numbers remain the property of K5. The Customer may not sell or transfer such numbers to any other person or entity.
- 3.9 On request, K5 will arrange to divert the Customer's incoming calls to another fixed line or mobile telephone number of the Customer's choice for the duration of the telephone Services being unavailable. Once the Services failure has been remedied, K5 will cancel the Customer's call diversion. The number chosen by the Customer for the call diversion service must be a UK number and is subject to the approval of the Third Party Provider. Freephone telephone numbers such as 0800 and 0870 will not be accepted. In the event that the call diversion telephone number selected by the Customer is a mobile telephone number then all additional costs for making the call will be payable by the Customer.
- 3.10 At the Customer's request, K5 may agree to provide a 'fraud monitor' service as part of the Services. This is not a fraud prevention system and does not prevent unauthorised access to the Customer Equipment. Rather, it monitors for potentially fraudulent activity originating from the Customer's phone lines and suspends the affected phone line(s) if suspected fraud is detected (per clause 10.1(b) below). K5 gives no warranties regarding the effectiveness of the fraud monitor service; it is provided as-is.
- 3.11 It is the sole responsibility of the Customer to set up and maintain its own security measures and K5 accepts no liability whatsoever for any losses or costs incurred as a result of a breach of security affecting the Customer's network unless K5 has been at fault.
- Broadband specific terms**
- 3.12 Estimated broadband speeds supplied to the Customer by K5 are calculated by the Third Party Provider. K5 is simply passing on the information provided by the Third Party Provider and accepts no responsibility itself for the accuracy of the estimates. K5 gives no warranty that the speeds actually obtained by the Customer will reflect the estimated speeds.
- SIP services specific terms**
- 3.13 [Not in use]
- Cloud services specific terms**
- 3.14 [Not in use]

<p>4 SUPPORT SERVICES</p> <p>4.1 In this clause "Services Failure" means the failure of the Services to perform in accordance with the Commercial Terms and clause 3, which may include:</p> <p>(a) the inability to make any call owing to a network issue;</p> <p>(b) a lack of internet connectivity; or</p> <p>(c) unavailability of the SIP services or cloud services.</p> <p>4.2 The Customer shall promptly report all Services Failures to K5 by email to support@K5communications.co.uk or by telephone to 0333 323 3888. The Customer shall include in its report reasonably detailed particulars of the nature of the fault.</p> <p>4.3 Subject to the exclusions in clause 4.4, K5 shall:</p> <p>(a) use commercially reasonable endeavours to rectify, or procure the rectification of, the Services Failure without undue delay to the extent that it is not attributable to a hardware fault;</p> <p>(b) where applicable, facilitate the making of an appointment for the Third Party Provider to attend the Premises to investigate/rectify the issue; and</p> <p>(c) if the issue is attributable to a hardware fault, notify the Customer of that fact and, if the Customer has entered into a separate contract for hardware maintenance services with K5, advise whether the hardware fault is covered by the terms of that separate contract.</p> <p>4.4 K5's obligations under clause 4.3 do not apply in circumstances where:</p> <p>(a) the Customer has failed to provide the information required under clause 4.2;</p> <p>(b) the Services Failure is caused by any third party other than a Third Party Provider (including if it results from faults with, or the improper use or installation of, the Customer Equipment);</p> <p>(c) a Third Party Provider is refused reasonable access to the Premises by the Customer or is not afforded the Customer's reasonable assistance; or</p> <p>(d) the Customer is in breach of the Network Line Rental Agreement.</p> <p>4.5 In the event it is not possible to rectify a Services Failure by the time period referred to in 4.3(a), the Customer may elect to use call diversion (as described in clause 3.9 above). This service will only be made available to the Customer if it is reasonably practicable to do so, and the Customer acknowledges that technical restrictions may prevent K5/BT from providing this service.</p> <p>4.6 K5 shall not be liable for any third party costs or expenses incurred by the Customer Services if it makes use of another service provider during periods of Services being unavailable.</p> <p>4.7 The Customer may be charged for any maintenance or repair work carried out in the event that the Customer reports a Services Failure and K5 finds that no Services Failure exists, or that the Customer has caused the Services Failure.</p> <p>5 CUSTOMER'S OBLIGATIONS</p> <p>5.1 The Customer agrees and undertakes:</p> <p>(a) to obtain, and to maintain for the duration of the Network Line Rental Agreement, all necessary licenses, permissions, consents, registrations and approvals (including wayleave agreements) which may be required to lawfully receive the Services;</p> <p>(b) to co-operate with K5 in all matters relating to the Services and to provide K5 with such assistance and information as K5 reasonably requests from time to time;</p> <p>(c) to prepare and give access to the Premises according to the reasonable instructions issued by (as applicable) K5 and/or the Third Party Provider and to ensure that the Premises comprise a safe working environment for K5 and the Third Party Provider's staff;</p> <p>(d) to provide, at its own cost and expense, a suitable location and appropriate conditions for Third Party Equipment including, where necessary, a continuous mains electricity supply and connection points;</p> <p>(e) to comply with K5's Fair Usage Policy (as it may be updated by K5 from time to time). A copy of the Fair Usage Policy will be supplied to the Customer at the outset of the Network Line Rental Agreement and further copies are available on request;</p> <p>(f) to use the Services in accordance with such conditions as the Third Party Provider specifies from time to time;</p> <p>(g) not to use the Services for a purpose other than that for which the Services are provided;</p> <p>(h) not to use the Services or perform its obligations under the Network Line Rental Agreement in a way that would be unlawful;</p> <p>(i) not to use the Services, or permit the Services to be used, for the transmission of any material which is intended to be defamatory, offensive, abusive, menacing in character or otherwise unlawful or immoral;</p> <p>(j) that it is the Customer's sole responsibility to secure access to the Services and connected hardware by implementing measures which may include (but shall not be limited to):</p> <p>(i) the implementation of firewalls or a private branch exchange (PBX);</p> <p>(ii) appropriate data access management rules and procedures, including in relation to the protection of login credentials; and</p> <p>(iii) in case of a suspected or known security breach, by resetting passwords, requesting that affected accounts be disabled by and reporting the incident to K5 and the police;</p> <p>(k) to maintain its telecommunications apparatus at all times in good working order in conformation with the relevant standards;</p> <p>(l) that following completion of any work carried out by a Third Party Provider, the Customer is solely responsible for returning all items of equipment back to their original position and for any making-good which is required as a result of the work;</p> <p>(m) comply with K5's and the Third Party Providers' reasonable safety and security requirements;</p> <p>(n) to be solely liable for any costs arising as a result of Toll Fraud; and</p>	<p>(o) in the event the Network Line Rental Agreement includes broadband services, obtain and install at its own cost such equipment as K5 advises is required for the utilisation of the broadband services.</p> <p>5.2 Should K5 or a Third Party Provider be required to cross any land belonging to any party other than the Customer or to put Third Party Equipment on any property which does not belong to the Customer (for example a neighbour or a landlord), the Customer will obtain the prior written permission of such party and will provide a copy to K5 and the Third Party Provider on request.</p> <p>5.3 The Customer shall consider obtaining professional security advice with regard to its private branch exchange (PBX), trunking and securing its networks. The Customer accepts that K5 does not provide such services.</p> <p>5.4 Where the Customer wishes to connect Customer Equipment to a Third Party Provider's network other than by using a BT main telephone socket, the Customer must obtain BT's prior permission and such Customer Equipment must:</p> <p>(a) be technically compatible with BT's then-current standards (available from BT on request);</p> <p>(b) not harm BT's network or equipment or the equipment of K5's or K5's other customers; and</p> <p>(c) be used for its intended purpose in accordance with the manufacturer's instructions and any additional instructions received from K5 or BT.</p> <p>6 CHARGES</p> <p>6.1 The Customer agrees to pay the Charges in accordance with these terms and conditions and the Commercial Terms.</p> <p>6.2 The amount of the Charges is set out in the Commercial Terms and may be amended by mutual agreement of the parties in writing or by operation of these terms and conditions.</p> <p>6.3 Additional call charges apply to calls made to some numbers and such charges are set out in K5's then-current tariff sheet which is available on request. K5 may amend its tariff sheets from time to time by giving the Customer notice in writing.</p> <p>6.4 Subject to clause 6.5, K5 may increase the Charges payable under these terms and conditions on 30 days' notice, subject to the following restrictions:</p> <p>(a) K5 may not increase any of the Charges within the first 12 months of the Network Line Rental Agreement (calculated from when the contract is entered into); and</p> <p>(b) K5 may not increase any single Charge by more than 5% over a 12 month period and no single Charge may be increased more than once in any 12 month period.</p> <p>6.5 The restrictions in clause 6.4 do not apply if and to the extent that K5 increases the Charges solely to pass on a Third Party Provider's price increase which affect the Services.</p> <p>6.6 The Customer is liable to pay for all fraudulent activity made from the Customer's network.</p> <p>7 PAYMENT</p> <p>7.1 K5 shall invoice the Customer:</p> <p>(a) monthly in advance for the Charges relating to the line rental and broadband components of the Services; and</p> <p>(b) except as set out in clause 7.7, monthly in arrears for all other Charges.</p> <p>7.2 If the Services (or any part of them) commence partway through K5's monthly billing cycle then the first set of Charges will include a pro rata charge for the remainder of the current month, plus the next month's monthly charge.</p> <p>7.3 Payment of K5's invoice is due no later than 14 days from the date of the invoice.</p> <p>7.4 Payment must be made by Direct Debit unless K5 has expressly agreed in writing to accept payment by another method. K5 reserves the right to charge its then-current admin fee (available on request) as a condition of accepting payment other than by direct debit.</p> <p>7.5 All Charges must be paid in full in pounds sterling without deduction, set off or withholding. If accepted by K5, payments by BACS must be in cleared funds.</p> <p>7.6 K5 reserves the right to amend the date and frequency of its invoices upon 60 days' written notice to the Customer.</p> <p>7.7 K5 reserves the right to submit ad hoc invoices, in advance of supply, for products or services not included within the recurring Charges under these terms and conditions (for example, the provision of a temporary 4G card, dongle or workaround for short-term internet connectivity). Such invoices are payable immediately on demand.</p> <p>7.8 All invoices will be submitted via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving K5 60 days' prior written notice.</p> <p>7.9 Value added tax (VAT) is payable in addition to all charges levied by K5 unless otherwise specified.</p> <p>7.10 K5 reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 7.</p> <p>7.11 If the Customer fails to pay any amount due under these terms and conditions then K5 reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.</p> <p>7.12 K5 reserves the right to vary the Customer's payment terms upon 14 days' notice in writing if:</p> <p>(a) the Customer fails to pay any of K5's invoices in accordance with these terms and conditions; or</p> <p>(b) K5 reasonably determines that the Customer is at risk of failing to pay K5's invoices on time due to a deterioration or anticipated deterioration of its financial position.</p> <p>7.13 K5 reserves the right to charge its then-current administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the direct debit due date.</p> <p>7.14 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to K5 within six months of the date of the invoice and the</p>
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	Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.	11.2	Either party may terminate the Network Line Rental Agreement, or any one or more components of the Services listed in clause 3.3 whereby the Remaining Service component(s) continue, without cause in accordance with (as applicable) clause 2.3 or clause 2.4.
8	LIABILITY		
8.1	References to liability in this clause 8 include every kind of liability arising under or in connection with the Network Line Rental Agreement, including but not limited to, liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.	11.3	The Customer may additionally terminate the Network Line Rental Agreement (or any one or more components of the Services listed in clause 3.3 ("Cancelled Services")) at any time prior to the expiration of the Minimum Term or current Extended Term by giving K5 notice in writing. Termination takes effect, and is conditional upon, the Customer having paid K5 in full on demand:
8.2	Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:	(a)	all Previously Paid Termination Charges (or in the case of Cancelled Services, all Previously Paid Termination Charges relating to those Cancelled Services) and the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer (or in the case of Cancelled Services, all such discounts and rebates relating to those Cancelled Services), plus the amount of any credit paid by K5 to the Customer;
(a)	death or personal injury caused by negligence;	(b)	all Charges incurred up to date of termination plus any charges imposed by Third Party Providers as a result of termination;
(b)	fraud or fraudulent misrepresentation; or	(c)	an early termination fee equal to the remaining Charges (or, if applicable, Charges relating to the Cancelled Services) that would fall due from the date of termination until the expiry of (as applicable) the Minimum Term or current Extended Term;
(c)	breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).	(d)	if terminating the line rental Services, an additional early termination fee equal to: the average aggregate monthly call Charges for line rental, broadband and all other Service components in the three months preceding the Customer's notice multiplied by the number of months remaining in the current Minimum Term or Extended Term; and
8.3	Subject to clause 8.2, the following types of loss are wholly excluded:	(e)	if K5 waived any of the above charges when the Customer previously cancelled one or more components of the Services listed in clause 3.3, all such previously-waived amounts shall be payable in full.
(a)	loss of profits;	11.4	K5 may additionally terminate the Network Line Rental Agreement at any time by giving 30 days' written notice to the Customer.
(b)	loss of sales or business;	11.5	Termination for cause
(c)	loss of agreements or contracts;	11.6	Without affecting any other right or remedy available to it, either party may terminate the Network Line Rental Agreement by giving 14 days' written notice if:
(d)	loss of anticipated savings;	(a)	the other party fails to pay any amount due under the Network Line Rental Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
(e)	loss of use or corruption of software, data or information;	(b)	the other party commits a material breach of any other term of the Network Line Rental Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of K5's breach) 60 days after being notified in writing to do so;
(f)	loss of or damage to goodwill;	(c)	the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
(g)	indirect or consequential loss; and	(d)	the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
(h)	losses arising from breaches of the Customer's security systems which are not attributable to K5's negligence or breach of duty.	(e)	the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
8.4	Subject to clauses 8.2 and 8.3, K5's total liability to the Customer shall not exceed the greater of:	(f)	a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
(a)	the Charges which would be payable in the 12 months following the commencement of the first of the Services; and	(g)	an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
(b)	the Charges paid by the Customer in the 36 months prior to the breach or the first breach of a series of connected breaches.	(h)	the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
8.5	Subject to clauses 8.2, K5 shall not be liable to the Customer for any breach of, or delay in, performing K5's obligations under the Network Line Rental Agreement which results from the Customer's breach of its obligations under these terms and conditions.	(i)	a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
9	FORCE MAJEURE	(j)	the other party (being an individual) is the subject of a bankruptcy petition, application or order;
9.1	Neither party shall be in breach of the Network Line Rental Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:	(k)	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 the other party's assets and such attachment or process is not discharged within 14 days;
(a)	the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and	(l)	any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.6(c) to clause 11.6(k) (inclusive);
(b)	if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.	(m)	the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
10	SUSPENSION	11.7	K5 may additionally terminate the Network Line Rental Agreement immediately upon notice if:
10.1	K5 may without liability to the Customer and without affecting its other rights and remedies: (a) suspend all or any of the Services; and/or (b) suspend any other services provided to the Customer by K5 (whether under the Network Line Rental Agreement or otherwise) if:	(a)	K5 determines that any information provided by the Customer is false or misleading; or
(a)	the Customer materially breaches any of these terms and conditions (including but not limited to a failure to pay any charges when due);	(b)	for any reason, the Third Party Provider ceases to provide the underlying services necessary for K5 to continue providing the Services in accordance with these terms and conditions.
(b)	K5's 'fraud monitor' service detects potentially fraudulent activity originating from the Customer's telephone numbers;	11.8	K5 may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Network Line Rental Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
(c)	the Customer becomes subject to any of the circumstances set out in clause 11.6(c) to clause 11.6(m) (inclusive); or		
(d)	the relevant system(s) need to be suspended to facilitate the maintenance, repair or upgrade of any of K5's systems and/or services (provided K5 shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances and to avoid suspending the Services during normal business hours);		
(e)	K5 is dealing with an actual or suspected security breach, virus, or attack whereby K5 cannot reasonably address that threat without suspending the Services (or parts thereof) and in which case K5 shall endeavour to minimise the interruption to the Customer;		
(f)	it is necessary because of an emergency or because K5 has a legal obligation to do so; or		
(g)	the Services depend on a Third Party Provider and that Third Party Provider has suspended its services.		
10.2	If K5 suspends the Services under clause 10.1 then the Customer shall nevertheless remain liable to pay the Charges.		
10.3	If K5 suspends the Services under clause 10.1 on the basis that the Customer has not paid an K5 invoice on time then K5 shall notify the Customer of that fact in writing.		
10.4	K5 reserves the right to charge an administrative charge for resuming the Services following a period of suspension due to the causes set out in clauses 10.1(a) to 10.1(c) (inclusive). Reconnection of analogue lines is charged at £120 per line, reconnection of ISDN lines is charged at £250 per pair and the connection of other Services is charged at £50. All amounts are exclusive of VAT.		
11	TERMINATION		
11.1	Termination without cause		

<p>12 CONSEQUENCES OF TERMINATION</p> <p>12.1 Following termination of the Network Line Rental Agreement:</p> <p>(a) the Services shall cease;</p> <p>(b) K5 shall invoice the Customer for all outstanding charges up to termination plus any charges imposed by Third Party Providers as a result of termination;</p> <p>(c) if the Network Line Rental Agreement was terminated by K5 under clause 11.6 or clause 11.7(a) prior to the expiration of the Minimum Term then K5 shall invoice the Customer for the following:</p> <p>(i) all Previously Paid Termination Charges; and</p> <p>(ii) the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer, plus the amount of any credit paid by K5 to the Customer; and</p> <p>(d) if the Network Line Rental Agreement was terminated by K5 under clause 11.6 or clause 11.7(a) prior to the expiration of the Minimum Term or current Extended Term then K5 shall invoice the Customer for the following:</p> <p>(i) the Monthly Charges which would have been payable for the unexpired part of the Minimum Term or Extended Term;</p> <p>(ii) the average monthly call Charges in the three months preceding the Customer's notice multiplied by the number of months remaining in the current Minimum Term or Extended Term; and</p> <p>(iii) if applicable, any Charges which would have been payable by the Customer under clause 11.3 had K5 not waived the payment of such amounts,</p> <p>12.2 and the Customer shall pay all of K5's invoices for such amounts immediately upon receipt, without set off or withholding, and in accordance with the payment instructions set out on them.</p> <p>13 INDEMNITY</p> <p>13.1 The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:</p> <p>(a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Network Line Rental Agreement;</p> <p>(b) the death or injury of any of K5's staff caused by the negligence or wilful misconduct of the Customer;</p> <p>(c) Toll Fraud or any other fraudulent or suspected to be fraudulent activity associated with the Customer's account and/or telephone number(s) (whether or not the Customer has been at fault); or</p> <p>(d) the enforcement of the Network Line Rental Agreement,</p> <p>13.2 and the Customer shall reimburse K5 all amounts payable under this clause immediately on demand.</p> <p>14 DATA PROTECTION</p> <p>14.1 K5 processes personal data in accordance with its Privacy Policy which is accessible from https://k5communications.co.uk/privacy-policy.</p> <p>15 NOTICES</p> <p>15.1 Any notice given to a party under or in connection with the Network Line Rental Agreement shall be in writing and shall be:</p> <p>(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or</p> <p>(b) sent by email to:</p> <p>(i) K5 at info@k5comms.co.uk; and</p> <p>(ii) the Customer at the email address specified in in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.</p> <p>15.2 Any notice shall be deemed to have been received:</p> <p>(a) if delivered by hand, at the time the notice is left at the proper address;</p> <p>(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or</p> <p>(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.</p> <p>15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.</p>	<p>16 GENERAL</p> <p>16.1 Interpretation.</p> <p>(a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.</p> <p>(b) A reference to "writing" or "written" includes email unless otherwise stated.</p> <p>(c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.</p> <p>(d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.</p> <p>16.2 Complaints. For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.k5communications.co.uk/complaints-procedure.</p> <p>16.3 Copies of the contract. K5 will only provide copies of the Network Line Rental Agreement to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.</p> <p>16.4 Assignment.</p> <p>(a) K5 may at any time assign its rights under the Network Line Rental Agreement to any third party.</p> <p>(b) The Customer may not transfer or otherwise deal with its rights under the Network Line Rental Agreement without K5's prior written consent. K5 may, at its absolute discretion, agree to the Network Line Rental Agreement being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.</p> <p>(c) K5's acceptance of payment under the Network Line Rental Agreement from a third party the Customer does not constitute its agreement to a variation or novation of the agreement.</p> <p>16.5 Variation. No variation of the Network Line Rental Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).</p> <p>16.6 Severance. If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.</p> <p>16.7 Waiver. No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.</p> <p>16.8 Entire Agreement.</p> <p>(a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.</p> <p>(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Network Line Rental Agreement.</p> <p>16.9 No partnership or agency. Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party</p> <p>16.10 Time for payment. Time is of the essence for the payment of monies by the Customer.</p> <p>16.11 Third party rights. The Network Line Rental Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.</p> <p>16.12 Governing law. The Network Line Rental Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.</p> <p>16.13 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Network Line Rental Agreement or its subject matter or formation.</p>
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