Ebbe Fone Galleria Terms & Conditions for the Provision of Communications Services

1. DEFINITIONS

1.1 In these Conditions the following terms shall have the following meanings:

"Additional Charges" means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 6.3.3;

"Annual Support Charge" means the support charge for the Maintenance Services as set out on the Order Form save where, and to the extent that, any Promotional Terms apply;

"Anti-Bribery Laws" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to the anti-bribery and/or anti-corruption, including the Bribery Act;

"Applicable Privacy Law" the relevant data protection and privacy law, regulations (including GDPR) and other regulatory requirements to which the Company is subject, and any guidance or statutory codes of practice issued by the relevant Privacy Authority/ies.

"Bribery Act" means the Bribery Act 2010;

"Broadband Acceptable Use Policy" the Customer's acceptable use policy, the current version of which is available at www.ebbe.co.uk (or at such other URL as is notified to the Customer by the Company from time to time);

"Business Day" means any and all days between Monday and Friday in any week but excluding English bank holidays or public holidays;

"Call Commissions" means such sums payable by the Company to the Customer in accordance with condition 8.2.7;

"Carrier" means the relevant third party public telecommunications operator or third-party network service provider;

"Charges" means the charges payable by the Customer for Services;

"Code" means any code of practice published by Ebbe Fone Galleria (or equivalent) from time to time;

"Commencement Date" means the commencement date for the Minimum Term of the Maintenance Services (where applicable) being the date of Delivery of the relevant Equipment or such other date as specified in the Order Form or as otherwise agreed in writing between the parties;

"Company" means Ebbe Fone Galleria Limited T/AS Ebbe Fone Galleria a company registered in England and Wales with company registration number 03092533 whose registered office is Centurion House, 129 Deansgate, Manchester, M3 3WR and trading address is 1-2 Kingsway Buildings, Kingsway, Manchester, M19 1PH and the expression "Company" includes the Company's assigns;

"Connection Date" means the date when the Carrier having received the relevant information from the Company is in a position to and has agreed to commence provision of the Fixed Network Services and VOIP Services to the Customer;

"Contract" means the agreement between the Customer and the Company for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions and/or Promotional Terms incorporated into the Contract in accordance with condition 2.1;

"Contractor" means any person who, on or prior to the commencement of the Contract (and/or the transfer of such services to the Company), supplied services to the Customer which were the same as or similar to those provided or to be provided by the Company to the Customer under that Contract;

"CPI Percentage" means the UK Consumer Price Index percentage published in January by the Office for National Statistics (or by any other body to which the functions of that office may be transferred).

"Customer" means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that person's, firm's, or company's authority and includes where relevant the Customer's permitted assigns employees and agents;

"Delivery" means the point that the Equipment arrives at the Customer's Sites before (where applicable) the unloading of Equipment from the delivery vehicle and `Delivered' shall be construed accordingly;

"Director General" means the UK Director General For Telecommunications;

"Emergency Call" means a Call to 999 or 112 and any other number associated with UK emergency services;

"Employees" means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

"Employment Regulations" means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

"End User Service" means such entertainment, live or recorded information or other service (including, but not limited to, Premium Rate Services) made available by the Customer from time to time for itself or any Information Provider;

"Equipment" means the equipment and/or software related products to be supplied under the Contract as set out in the Order Form (and also has extended meanings under condition 5.4.2 and condition 6 in the case of and for the purposes of those conditions only);

"Fixed Network Services" means the network services more particularly detailed on the Order Form (as modified or substituted by the Company from time to time) to be provided hereunder by the Company to the Customer;

"GDPR" Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

"General Conditions" means the general conditions of entitlement set out in the notification issued by the Director General For Telecommunications, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said act, as may be amended, modified or replaced from time to time;

"Information" means information or other content which is made available to callers and which represents the subject matter of a Premium Rate Service in whole or in part;

"Information Provider" means any organisation or person providing Information or with whom the Customer contracts in respect of the provision of Premium Rate Services;

"Installation" means the physical installation of Equipment at the Customer's Sites;

"Installation Services" means services relating to the supply and Installation of Equipment (where applicable);

"Maintenance Services" means the maintenance services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

"Material Detriment" means an increase to Charges of more than the CPI Percentage announced in the month preceding the increase.

"Microenterprise and Small Enterprise Customer" means a Customer who is:

(i) acting in the course of a business which is carried on by that Customer: and

(ii) is not a communications provider; and

(iii) has 10 or fewer workers (whether as employees or volunteers or otherwise)

"Minimum Term" means the minimum contract period applying to each of the Services commencing on the Commencement Date for Maintenance Services or the Connection Date with regard to Fixed Network Services (as the case may be) and expiring on the day at the end of the minimum period set out in the Order Form;

"Monthly Minimum Call Spend" means the minimum monthly sum of money as set out on the Order Form that will be spent by the Customer on call charges commencing on the Connection Date;

"Normal Working Hours" means 9.00am to 5.00pm on any Business Day;

"Not-For-Profit Customer" means a Customer which has 10 or fewer workers (whether as employees or otherwise but excluding volunteers and which by its constitution or enactment is:

(i) is required (after payment of all outgoings) to apply the whole of its income and any capital it expends for charitable or any public purpose; and

(ii) is prohibited from directly or indirectly distributing among its members any part of its assets (other than for charitable or public purposes)

"Number" means either (i) such telephone number from within a national number group range (used by the Customer in connection with an End User Service) as may be allocated by the Company to the Customer from time to time ("Company Number") or (ii) such telephone number not being a Company Number from within a national number group range (used by the Customer in connection with an End User Service) and as may be programmed by the Company for the purposes of making available a Fixed Network Service in respect of such telephone number;

"Order Form" means the order form to which these Conditions are attached or which is expressed to be subject to these Conditions which sets out the details of the order, including (without limitation) the Customer's details and the Equipment and/or Services to be supplied under the Contract, and constitutes the Customer's order;

"Personal Data" any information relating to an identified or identifiable natural person as defined by the Applicable Privacy Law and including any additional such personal data to which the Processor have access from time to time in performing the Services.

"Phone-paid Services Authority" means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of Phone-paid Services Authority by any competent authority;

"Premium Rate Service" means any service comprising live or recorded telephone information and/or entertainment and similar services which would be defined as such in the Code;

"Price" means the price payable by the Customer for the Equipment and Installation Services (where applicable);

"Promotional Terms" means any additional terms which are to apply in relation to the charges payable by the Customer under the Contract (for any particular goods or services to be provided thereunder) and which may be specified in the Order Form and/or notified by the Company in writing to the Customer in relation to the relevant goods and/or services, at the time the relevant Order Form was submitted;

"Relevant Laws" means any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

"Services" means any of the services supplied by the Company including, without limitation, the Installation Services, the Fixed Network Services and the Maintenance Services (as applicable);

"Service Specific Conditions" means any additional terms and conditions which are to apply to the Contract as specified in the Order Form or these Conditions in respect of specific Services, for example (and without limitation) the Broadband Acceptable Use Policy;

"Site" means a place of business at which the Services and/or Equipment are to be provided as specified in the Order Form;

"Special Entry" means any additional entry to the appropriate phone book requested by the Customer in addition to the regular information published about the Customer in any phone book issued by or on behalf of British Telecommunications plc;

"Subcontractor" means any subcontractor of a Contractor;

"Tariff" means the Company's tariff for each of the Services which is set out at www.ebbe.co.uk or at such other URL as is notified to the Customer by the Company from time to time; and

"User Instructions" has the meaning given to it in condition 6.5.2.

2. CONTRACT FORMATION

2.1 The Order Form constitutes the Customer's offer to the Company to purchase the relevant Equipment and/or Services on and subject to the terms of the Order Form, these Conditions, any other Service Specific Conditions and/or Promotional Terms referred to as being applicable. Once such offer is accepted by an authorised representative of the Company signing the Order Form, a Contract shall come into effect. The details recorded on the Order Form, together with these Conditions and any other Service Specific Conditions and/or Promotional Terms referred to as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties (to the fullest extent permitted by law) and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of the Company (in its sole and absolute discretion) and, in respect of a Contract which provides for the supply of:

2.1.1 Equipment and/or Installation Services, (without limitation) the condition in condition 4.1.1 being met; and/or

2.1.2 Fixed Network Services, (without limitation) the conditions in condition 5.2.1 being met; and/or

2.1.3 Maintenance Services, (without limitation) the condition in condition 6.1.1 being met.

2.2 All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon these Conditions which cannot be varied unless agreed in writing by the Company

and these Conditions supersede and override all other terms and conditions appearing elsewhere including (without limitation) any terms and conditions of the Customer referred to on any website or which the Customer may purport to apply under any purchase order or acknowledgement of delivery or similar document; and/or established between the Company and the Customer by course of dealing.

2.3 In the event of a conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions will prevail in respect of the relevant Service. In the event of a conflict between these Conditions, any Service Specific Conditions and the Order Form, the Order Form will prevail in respect of the relevant Service. In the event of any conflict between these Conditions and the Order Form in relation to any Equipment, the Order Form shall prevail. In the event of any conflict between (in relation only to the relevant Equipment and/or Services, the pricing of which is the subject of any applicable Promotional Terms) the Promotional Terms and any of either these Conditions, the Order Form and/or the Service Specific Conditions, the Promotional Terms shall prevail (but only in so far as they relate to the amount which is payable by the Customer in respect of the relevant Equipment and/or Services (and, for the avoidance of any doubt, the fact that the Promotional Terms are silent on a particular matter whereas any of these Conditions, the Order Form and/or the Service Specific Conditions make provision for the same, shall not be deemed to give rise to a conflict).

2.4 Any illustrations, samples or descriptive material provided by the Company, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred. The Customer acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.

2.5 No variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of the Company) will be accepted by the Company unless authorised by notice in writing by a Director of the Company.

2.6 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.6) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Services or any other contract entered into under these Conditions.

2.7 Any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the Customer shall procure that any user of the Services or Equipment to include (without limitation) any employee, agent or contractor, shall not do such act or thing.

2.8 The Customer warrants and undertakes to the Company that it is entering into the Contract for the purposes of its trade, business and/or profession.

3. CUSTOMER'S ORDER AND SPECIFICATIONS

3.1 The Customer shall be responsible for providing the Company with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable the Company to duly perform the Contract.

3.2 Without limitation to the generality of condition 3.1, the Customer shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or the supply of any Services (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall be liable in respect of any liability, loss, injury, damage, demand, claim, cost charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto, or where the compliance with any such any drawings, sketches, specifications, descriptions or other instructions by the Company constitutes the infringement of the intellectual property or other rights of another person.

4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES

In the event that the section related to Equipment is completed on the relevant Order Form, this condition 4 shall apply to the Contract.

4.1 DELIVERY

4.1.1 Any Contract including the provision of Equipment and/or Installation Services based on an order which is accepted by the Company pursuant to condition 2.1 is, until the delivery of the applicable Equipment, conditional upon the availability of the relevant Equipment and the Company providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Equipment and/or Installation Services do not contain any errors or omissions. In consideration of payment of the Price pursuant to condition 9.1 the Company shall (subject to condition 4.3.2) supply the Equipment, and shall take reasonable steps to deliver the Equipment and where applicable supply the Installation Services within an estimated period for delivery, such period shall (unless otherwise specified) commence from the date of receipt by the Company of all instructions and information for the execution of the Contract, but such time is not guaranteed nor deemed to be of the essence of the Contract.

4.1.2 Without prejudice to the generality of condition 3, the Customer shall be responsible for providing the Company with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by the Company to the Customer.

4.1.3 If the Customer fails to take delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the delivery of any Equipment in accordance with the Contract is delayed for more than twenty-eight days after the Company has given notice in writing to the Customer that the Equipment is ready for delivery the Equipment shall be deemed to have been Delivered in accordance with the Contract and thereafter the Equipment shall be deemed to be at the risk of the Customer. The Customer shall pay to the Company the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight days.

4.1.4 If the Contract provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the Contract as at an end or to reject any other instalment.

4.1.5 If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.3 then payment shall be made by the Customer to the Company of the balance of the Price within seven days of such deemed delivery date.

4.2 CONNECTION

4.2.1 The responsibility for the cost of connection to the public switch network and/or the provision of additional lines to the public telephone system lies with the Customer.

4.2.2 The Customer shall ensure that a suitable earthed mains electricity supply of 240volts ac to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment within 3 metres of such pieces of Equipment.

4.2.3 The Customer shall prepare the Site(s) in accordance with the Company's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s).

4.3 PROPERTY AND RISK

4.3.1 The Equipment shall be at the Customer's risk from the moment of Delivery or deemed Delivery (as described in condition 4.1.3) whether or not property in the Equipment has passed or payment or part payment made therefore, and thereafter the Customer shall be responsible for insuring the Equipment.

4.3.2 Notwithstanding Delivery and the passing of risk, the property and the legal and beneficial title in the Equipment supplied under the Contract shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable) and all other equipment and/or services agreed to be sold by the Company to the Customer for which payment is then due.

4.3.3 Until such time as the property in the Equipment has passed to the Customer, the Customer shall hold such Equipment as the Company's fiduciary agent and bailee, and keep such Equipment properly stored, protected and insured and identified as being the Company's property until title passes.

4.3.4 Until such time as the property in the Equipment passes to the Customer the Company shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to the Company at its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and remove and repossess such Equipment.

4.3.5 The Customer shall not, without the written consent of the Company, be entitled to pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable. The Customer shall ensure that any Equipment provided by the Company which remains the property of the Company shall remain identifiable and shall be kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value.

4.4 LIABILITY FOR REPLACEMENT OR REPAIR

4.4.1 Subject to the following sub-conditions of this condition 4.4, the Company shall, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the later event, at its option and without cost to the Customer either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacture or Installation (only where the Company supplies Installation Services under the Contract) provided that the Company shall have no liability for any such defects unless the Customer notifies the Company, within three Business Days from Delivery or Installation (where applicable) whichever is the later event, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty four hours of any latent defect arising within such twelve month period.

4.4.2 Where the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for repair, replacement, and renewal under the Contract shall be transferred to the relevant third party maintenance provider on Delivery, subject only to the Company's relevant liability in respect of defects arising on or before Delivery of the Equipment provided that the Customer notifies the Company within three Business Days of Delivery in accordance with condition 4.4.1.

4.4.3 Where the Company is to supply Maintenance Services in respect of the relevant Equipment under the Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

4.4.4 The liability of the Company shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Company by the Customer prior to entering into the Contract, and in particular shall not apply to defects which arise from the neglect, misuse, or faulty maintenance of the Customer or any of its other contractors, or from alterations carried out without the prior written consent of the Company or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

4.4.5 Any repaired or new parts provided by the Company under this condition 4 will be delivered by the Company to the Customer free of charge. Any Equipment (or part) which has been returned to the Company and replaced by the Company shall become the property of the Company.

4.4.6 The Company reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs where the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer, or from normal wear and tear.

4.4.7 Neither acknowledgement of receipt nor investigation by the Company of any claim hereunder or consent given hereunder shall constitute or imply admission by the Company of any liability in respect of such claim.

4.4.8 Save where the Customer has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 6 shall apply) the Customer acknowledges and agrees that, subject to condition 11.5, the rights and remedies provided to the Customer (in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or installation) under this condition 4.4 shall be the Customer's sole and exclusive remedies in respect of any defect in the Equipment resulting from faulty design, materials or manufacture or installation.

4.5 TRADE MARKS AND BRANDING

4.5.1 The Company shall be entitled to fix legends bearing the Company's and/or its third party supplier's name and/or trade marks or other marks (“Marks”) to any Equipment.

4.5.2 The Customer shall ensure that no Marks affixed to the Equipment are removed or defaced at any time.

5. FIXED NETWORK SERVICES

In the event that the section(s) relating to Fixed Network Services is completed on the relevant Order Form, this condition 5 shall apply to the Contract.

5.1 DURATION

Subject to earlier termination under condition 13 or as otherwise stated in this condition 5:

5.1.1 Unless either (a) the Customer terminates a Contract in accordance with condition

5.1.2 or (b) the Customer is a Microenterprise or Small Enterprise Customer or a Not-For-Profit Customer (in which case condition 5.1.3 shall apply) then, upon the expiry of the Minimum Term the Contract will renew automatically for a further period of twelve months (a "Rollover Period").
5.1.2 Unless the Customer is a Microenterprise or Small Enterprise Customer or Not-For-Profit Customer (in which case condition 5.1.3 shall apply), the Customer may terminate the provision of Fixed Network Services under a Contract by giving notice in writing to the Company, such notice to be given not less than ninety days prior to the end of the expiry of the Minimum Term or end of any Rollover Period and to become effective no earlier than the expiry of the Minimum Term or (if the relevant Contract has automatically renewed under condition 5.1.1) upon the expiry of the relevant Rollover Period. If the Customer does not give notice to terminate the provision of Fixed Network Services under a Contract during a Rollover Period in accordance with this condition 5.1.2 the relevant Contract will automatically renew for a further Rollover Period.
5.1.3 Where the Customer is a Microenterprise of Small Enterprise Customer, the Customer may terminate the provision of Fixed Network Services by giving thirty days' prior notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term.

5.2 SUPPLY OF FIXED NETWORK SERVICES

5.2.1 Any Contract for Fixed Network Services based on an order which is accepted by the Company pursuant to condition 2.1 is (prior to the Connection Date) conditional on the following:
(a) the Company carrying out a survey which reveals to the Company's satisfaction that it is possible for the Company to supply the Fixed Network Services and that any details or information used by the Company to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey;
(b) that the relevant Fixed Network Services can be provided, and the Company makes no warranty that the Fixed Network Services can be provided until lines have been installed and are operational; and
(c) the provision by the Company of confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Fixed Network Services do not contain any errors or omissions.
5.2.2 The Company undertakes to use reasonable endeavours to supply the Fixed Network Services to the Customer and to provide the Fixed Network Services with due skill and care as and from the Connection Date subject to these Conditions. The Customer acknowledges that the Fixed Network Services cannot be guaranteed to be fault free and the Company does not warrant error free or uninterrupted use of the Fixed Network Services. Notwithstanding any other provision of these Conditions, the Company shall not be liable to the Customer in contract, tort (including, but not limited to, negligence), or otherwise for any acts or omissions of Carriers which affect or otherwise impact the Fixed Network Services.
5.2.3 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Fixed Network Services the Company will use reasonable endeavours to rectify the fault as soon as practicable.
5.2.4 Except where stated on an Order Form, the broadband element (if any) of any Fixed Network Services does not include the provision of any modems or other equipment that the Company may supply to the Customer under a separate contract.
5.2.5 The Customer acknowledges that the speed of any broadband element (if any) of the Fixed Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line test. The Company gives no warranty or guarantee that the Customer's line(s) will produce top speeds of up to the maximum speed advertised, (as the final speed is governed by factors that are beyond the Company's reasonable control).
5.2.6 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as or in its registered domain name (or any of them) ("Domain Names") and/or as part of the Customer's uniform resource locator ("URL").
5.2.7 If the Company undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse the Company for any registration fees paid by the Company to the relevant internet registration authorities. The Company does not guarantee that any Domain Names or URL requested by the Customer will be available.
5.2.8 The Company may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if the Company reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene, or and infringement of the rights of a third party.

5.3 SUPPLY OF TELEPHONE NUMBERS

5.3.1 The Customer hereby acknowledges and accepts that under the General Conditions the Director General has the power to withdraw an allocation of telephone numbers and the Carrier may withdraw an allocation of telephone numbers to the Company and therefore any new telephone numbers provided to the Customer under the Contract, prior to their connection, cannot be guaranteed as available and therefore the Company shall not be liable for any costs incurred by the Customer in the use of any such telephone number (including, without limitation, in the advertising of such telephone number) which is withdrawn by the Director General and/or the relevant Carrier prior to connection (save where and to the extent that such withdrawal is the fault of the Company).
5.3.2 Without prejudice to any rights the Customer may have to port a number allocated to it, the Customer acknowledges it does not own or have any right to sell any number provided to it by the Company. Where the Customer has a number from a national numbering plan, the charges for porting such number shall be as set out in the Tariff.

5.4. USE OF THE FIXED NETWORK SERVICES

5.4.1 The Customer shall be responsible for the safe custody and safe use by it of the Fixed Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:
(a) to use the Fixed Network Services in accordance with such additional Conditions as may be notified to it in accordance with condition 17 from time to time;
(b) not to cause any attachments, other than those that meet the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) and any other requirements under the General Conditions and all other Relevant Laws, to be connected to the Fixed Network Services and the Company shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of the Company it is liable to cause death, personal injury or damage or to impair the quality of the Fixed Network Service;
(c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission, cause the Company to contravene, any Relevant Laws or General Conditions;
(d) not to use the Fixed Network Service as a means of communication for a purpose other than that for which the Fixed Network Service is provided and as may be set out in any relevant literature supplied by the Company from time to time;
(e) not to use the Fixed Network Service to make, provide, communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Fixed Network Services;
(f) not to use the Fixed Network Service in a manner which constitutes a violation or infringement of the rights of any other person;
(g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws for the item as from time to time applicable;
(h) to provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;
(i) to implement adequate control and security over the use of the Fixed Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/or any calls generated by rogue diallers or hackers;
(j) not to use the Fixed Network Services in a way that breaches any Relevant Laws (including without limitation the Code or any guidelines, regulations or instructions of Phone-paid Services Authority) or any licence applicable to the Customer or that is in any way unlawful or fraudulent; and
(k) not to send or procure the sending of any unsolicited advertising or promotional material.
5.4.2 Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Fixed Network Service (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer for which condition 4 applies) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition
5.4.2 only such equipment shall be deemed Equipment under those conditions. The Customer shall be liable to the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the fault of the Company).
5.4.3 If the Customer takes a line rental from the Company, the Customer is also committed to using the Company for calls over that line. Should the Customer (during the applicable Minimum Term) use an alternative carrier for calls once the Contract for the provision of the telephone line has commenced, or prevent the Company from carrying calls in any monthly period so that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that the Company may charge the Customer the differential between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).
5.4.4 The Fixed Network Services are provided solely for the Customer's use and the Customer's cannot resell or attempt to resell the Fixed Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.
5.4.5 The Company does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and/or any other materials (in whatever form) which may be accessible by the Customer from any other person once it has the Fixed Network Services (the "Content") or any further information or results which may be derived from it. The Customer acknowledges that, the Content is outside the control of the Company and the Customer will not rely on any Content in making any business or other decision and that the Customer uses of the Content is at its sole risk. 5.4.6 The Customer acknowledges that the Content may be protected by copyright, trademark and other intellectual property rights, as applicable. The Customer will not and will not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.
5.4.7 The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. The Company will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.
5.4.8 The Customer warrants, represents and undertakes that any information the Customer makes available on their website, both the Customer's ("Customer Information") or that of a third party ("Third Party Content") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.
5.4.9 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by the Company to the Customer.
5.4.10 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Fixed Network Services, and the Customer consents to the Company co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Fixed Network Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge the name and address and account information relating to the Customer to such third parties.
5.4.11 The Customer acknowledges that the broadband element (if any) of the Fixed Network Services is provided to other users and the Company owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation the Company may change the Customer's chosen access rate or manage the Customer's Services as the Company sees fit in the circumstances.
5.4.12 To prevent spam from entering and affecting the operation of the Company's systems and the Fixed Network Services, the Company may take any reasonable measures or actions necessary

to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. The Company may also use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. The Company gives no warranties whatsoever that such technology will be effective in any way, including (without limitation) against unsolicited emails or against any viruses, worms, Trojan horses or other programs or devices that are apparently intended to access and modify, delete or damage data file(s) or computer program(s).

5.4.13 To enable Customers to have a better understanding of what is and is not acceptable when using broadband products, and to help them get the best out of the internet, the Company has developed a Broadband Acceptable Use Policy relating to the broadband element of the Fixed Network Services. The Customer shall comply with the Broadband Acceptable Use Policy. The Company may change the Broadband Acceptable Use Policy at any time by publishing the changes on its website (www.ebbe.co.uk or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect.

5.4.14 The Customer acknowledges that, in order to use the broadband element (if any) of the Fixed Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer (PC) of a minimum specification suitable for the application. The Customer is responsible for ensuring that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.

5.4.15 In circumstances where the Customer receives the broadband element of the Fixed Network Services, the Customer remains responsible for all rental charges made by the Customer's line rental provider relating to the Customer's relevant telephone line (together with any repair and maintenance charges (unless the relevant damage was caused by the Company's negligence)) and all call charges from the Customer's fixed line telephony service provider.

5.4.16 The Customer agrees that Phone-paid Services Authority may monitor any End User Service at any time.

5.4.17 In respect of each End User Service which requires the approval of Phone-paid Services Authority pursuant to any regulation or code of practice, the Customer shall, before such End User Service (or any change thereto) is made available to callers, submit to the Company written evidence of such approval.

5.4.18 The Customer will not misuse the Fixed Network Services in any way and will use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Customer's capability to answer such calls or cause congestion (the existence of congestion to be reasonably determined by the Company taking into account normal levels of traffic on the network). Where the Company notifies the Customer of the occurrence of any such congestion or misuse, then the Customer shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Customer's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing

5.5 TRANSFER FROM THIRD PARTY SUPPLIERS

5.5.1 Where the transfer of lines and services from third party suppliers is selected by the Customer in the Order Form, then the provision of any and all relevant existing services supplied to the Customer by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Tariff.

5.5.2 The Customer hereby acknowledges and accepts that it is the Customer and not the Company who is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Company formally accepting such Order Form that the Company will pay for specified charges.

5.5.3 If the Customer is migrating to the broadband element of the Fixed Network Services from a third party provider of an alternative broadband service, the Customer will need to obtain a Migration Authorisation Code ("MAC") from that service provider. This MAC will be valid for thirty days from the date of issue and can only be used once. It is the Customer's responsibility to obtain this code and to ensure that the Customer provides it to the Company in sufficient time to process the Customer's migration. The Company will not be responsible for any delay, costs, expenses, loss or damage arising to or incurred by the Customer through failure to connect the Customer to the broadband element of the Fixed Network Services as a result of the Customer's failure to provide the MAC as required by this condition.

5.6 SUSPENSION OF FIXED NETWORK SERVICES

5.6.1 Without prejudice to any other right of the Company to suspend or terminate the Services under these Conditions, the Company may at its sole discretion elect to suspend forthwith provision of the Fixed Network Services until further notice without further liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

(a) the Customer is in breach of a material term of these Conditions and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company on the due date or to comply with the Broadband Acceptable Use Policy;

(b) the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;

(c) the Company has reasonable grounds to believe that the Fixed Network Services are being used fraudulently or unlawfully;

(d) any licence under which the Customer has the right to run its telecommunications system and connect to the Fixed Network Services is revoked, amended or otherwise ceases to be valid;

(e) the Company or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Customer; or

(f) any maintenance or repair is necessary or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, the Company shall not be required to give any advance notice)

5.6.2 The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 5.6.1 and/or the recommencement of the provision of the Fixed Network Service as appropriate, save in the case of a suspension, pursuant to condition 5.6.1(b).

5.6.3 Without prejudice to any other right of termination under these Conditions, the Company may terminate the Contract for Fixed Network Services forthwith in the event that its right or the right of the relevant Carrier to provide the Fixed Network Services is withdrawn by any supplier to it or the Director General pursuant to the General Conditions or otherwise.

5.6.4 On termination of the Contract for any reason the Customer shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Number from the Fixed Network Services.

5.7 VOICE OVER INTERNET PROTOCOL (VOIP) FIXED NETWORK SERVICES

5.7.1 Any Contract for VOIP services which results from an order accepted by the Company, pursuant to condition 2.1 is conditional on the Customer acknowledging and accepting that:

(a) the VOIP service may not offer all the features or resilience the Customer may expect from a conventional phone line; and

(b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond the Company's control e.g. power disruptions, failures or the quality of any connection;

(c) wherever possible, alternative arrangements should be made by the Customer and a primary telephone line maintained;

(d) if the Customer uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated;

(e) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;

(f) the ability for the Customer to make Emergency Calls cannot be guaranteed;

(g) it will not be possible to make Emergency Calls if the Company has suspended or interrupted the VOIP service for any reason;

(h) the Customer shall required to provide/confirm his location when making a VoIP originated Emergency Call to enable the correct emergency organisation to respond; and

(i) a VoIP originated Emergency Call will not receive the same network priority at all points over non-emergency calls as an Emergency Call made on a mobile network or on a circuit-switched fixed line.

5.8 PUBLISHING OF CUSTOMER DETAILS

5.8.1 If applicable and unless the Customer requests that the Company does not do it, the Company will, as soon as is reasonably practical, publish the Customer's name address and the telephone number for the Fixed Network Service in the relevant phone book serving the Customer's area and make the said telephone number available from a directory enquiries service.

5.8.2 If the Customer requests a Special Entry to be placed in the relevant phone book issued by the Carrier it must inform the Company at the earliest available opportunity. Where the Company agrees to use its reasonable endeavours to register a Special Entry, the Customer may be required to pay an additional charge and sign a separate contract in respect of that entry.

5.9 DISPUTE RESOLUTION

5.9.1 The Company will attempt to resolve any dispute that the Customer may have with the Company. If the dispute cannot be resolved within 8 weeks of the Customer raising the dispute with the Company, then the Customer may refer the matter to:

(a) Ombudsman Services Communication, via the website www.ombudsman-services.org/ or by telephone on 0330 440 1614 or 01925 430 049; or

(b) OFCOM, the communications regulator via the website www.ofcom.org.uk or by telephone on 0300 123 333 or 0207 981 3040.

5.9.2 Any dispute must be submitted in writing to the Company's Customer Care Centre at Ebbe Fone Galleria ,1-2 Kingsway Buildings, Kingsway, Manchester, M19 1PH.

5.9.3 Nothing in this condition 5.9 shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

6. MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed on the relevant Order Form, this condition 6 shall apply to the Contract.

6.1 DURATION OF MAINTENANCE SERVICES

6.1.1 Any Contract including the provision of Maintenance Services based on an order which is accepted by the Company pursuant to condition 2.1 is, until the Commencement Date, conditional on the Company providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Maintenance Services do not contain any errors or omissions. Subject to this condition 6.1.1 and in consideration of (and subject to) the payment of the Annual Support Charge each year by the Customer, the Company shall supply to the Customer the Maintenance Services in accordance with the Contract.

6.1.2 Subject to earlier termination in accordance with its terms, the Contract for Maintenance Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract in relation to the Maintenance Services will renew automatically for further periods of twelve months.

6.1.3 The Customer may terminate the Contract in relation to the Maintenance Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the day after the last day of the Minimum Term or upon each anniversary of such date thereafter (as applicable).

6.2 PROVISION OF MAINTENANCE SERVICES

6.2.1 The Maintenance Services shall apply only in respect of Equipment as set out in the Order Form and any other equipment which it is agreed between the parties in writing shall be included under the Contract for Maintenance Services, which for the purposes of this condition 6 shall be deemed Equipment.

6.2.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will use its reasonable endeavours to, within two Business Days of receipt of notification from the Customer of a request for the provision of Maintenance Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship of the Company and/or materials which in the opinion of the Company are necessary for the proper functioning of the Equipment. Any time period stated in respect of the Company's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

6.2.3 Where the Company replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.

6.2.4 The Company does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 6.3.1 and 6.3.2) will ensure that the Equipment operates without interruption or error.

6.2.5 Subject to spare part availability, the Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required to keep the Equipment in satisfactory operation. All replaced parts shall become the property of the Company.

6.2.6 Subject to condition 6.3.1, Maintenance Services shall not include the following (the "Excepted Services"):
(a) the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the Company regarding the operation of the Equipment);
(b) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of condition 6.5;
(c) the alteration, modification or maintenance of the Equipment by any person other than the Company without the Company's prior written consent;
(d) the transportation or relocation of the Equipment save where the same has been performed at the request of the Company;
(e) the maintenance or repair of any extension wiring (after the initial twelve month warranty period under condition 4.4.1 has passed), any Equipment not at the Site, or of anything other than the Equipment;
(f) any defect or error in any software used upon or in association with the Equipment;
(g) the supply of replacement cassettes, aerials, aerial systems and batteries;
(h) the reprogramming of the Equipment to provide improved or modified service or facilities;
(i) Equipment faults caused by telephone area code changes or changes in Carriers;
(j) ancillary items including but not limited to answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
(k) maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis; and/or
(l) a dedicated helpdesk.

6.3 ADDITIONAL CHARGES

6.3.1 The Company may, in its discretion, upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 6.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 6.3.3 below.
6.3.2 Without prejudice to condition 6.3.1 above the Company shall be entitled to levy (and receive from the Customer) Additional Charges in the manner described in condition 6.3.3 below if:
(a) Maintenance Services are provided in circumstances where any reasonably skilled and competent person would have judged the Customer's request to have been unnecessary; and/or
(b) the Customer reports an apparent fault of the Equipment to the Company and upon investigation by the Company the Equipment and/or its Installation is found not to be defective (in respect of a charge for the investigation and/or for any call-out including, without limitation, Equipment changed in a postal exchange where the Company reserves the right to make a charge up to the replacement value of the item in question); and/or
(c) where a fault that has been reported to the Company has been a non-Equipment fault but instead one of the Carrier (in respect of a charge for the call-out in accordance with the Company's then current Tariff).
6.3.3 Additional Charges shall be levied by the Company as follows:
(a) following completion of the work in respect of additional services supplied under condition 6.3.1 and 6.3.2(a); and
(b) following completion of the investigation and/or call out in respect of condition 6.3.2(b) and 6.3.2(c); and
(c) such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Customer within ten days of the date of an invoice.
6.3.4 In respect of a fault which is a failure by the Carrier as referred to in condition 6.3.2(c) the Company will provide to the Customer a Carrier fault reference number that may be used by the Customer to recharge the cost the Company has charged on to the Carrier, however this does not constitute any acceptance of liability for such costs by the Company and, for the avoidance of doubt, the Company is not liable to the Customer where the Carrier refuses to cover such costs (or any of them).

6.4 DISCONTINUED SERVICES

6.4.1 Without prejudice to condition 13 or any other right of suspension or termination of Services under these Conditions, the Company shall have the right to discontinue the Maintenance Services in respect of specified Equipment (without further liability to the Customer) in the event that the Company's supplier and/or the manufacturer has ceased to supply such Equipment PROVIDED THAT the Company shall notify the Customer as soon as reasonably practical after it is aware of any cessation in supply of the Equipment and shall arrange with the Customer to either terminate the Contract or replace or upgrade the affected Equipment at the Customer's expense.
6.4.2 Without prejudice to condition 13 or any other right to terminate any Services under these Conditions, the Company shall have the right to terminate forthwith the supply of the Maintenance Services (without further liability to the Customer) in the event that any necessary approvals required by the Company to maintain any of the Equipment are disallowed or revoked by any government or regulatory agencies or any third party.
6.5 The Customer undertakes that:
6.5.1 it shall ensure that the Equipment is used in a normal and proper manner;
6.5.2 it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("User Instructions");
6.5.3 it will carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
6.5.4 it will not permit alteration to call routing apparatus or extension wiring except by the Company, or by the Company's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either (a) the Company so agrees in writing, or (b) the Company fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
6.5.5 it will appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with the Company;
6.5.6 it will not employ or permit a third party to make any alterations to the programming or physical structure of the Equipment;
6.5.7 it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;
6.5.8 if the Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

6.6 CHANGE OF LOCATION

6.6.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of the Company, (such consent not to be unreasonably withheld). Where the Company consents to such relocation, the Company shall provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with the Company's then current Charges applying at that time, and such payment shall be in addition to the Annual Support Charge

7. FINANCE AND CREDIT

7.1 The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to, the Company carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, directors, officers and assigns and the Customer undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.
7.2 It is agreed that where the Company approaches a finance provider to arrange finance for the purchase of Equipment then the Company acts as an agent for the Customer and not for the finance provider.
7.3 The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, who will add to the person's records details of the searches and these will be seen by other organisations that make searches.
7.4 In the event that the Company is unable to obtain relevant finance on the terms originally proposed then the Company shall return the deposit received from the Customer for the relevant Equipment without further liability to the Customer.
7.5 Where third party indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Customer and shall entitle the Company to retain any deposit paid by the Customer.
7.6 After Delivery and Installation (where applicable) is completed any failure by the Customer to complete any relevant finance agreement documentation shall render the Customer liable to pay to the Company the whole of the Price as defined in condition 8.1.2 within seven days of presentation of an invoice.

8. PRICE AND CHARGES

8.1 EQUIPMENT

8.1.1 Save where, and to the extent that, any Promotional Terms apply, the Price is as stated on the Order Form and is exclusive of VAT or any other tax or duty payable. The amount of such taxes or duties shall be added to the Price and shall be payable by the Customer in the same manner as the Price. Any invoices issued by the Company in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
8.1.2 Unless otherwise specified the Price is based on the assumption that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one continuous visit to the site agreed with the Customer and accordingly the Company may at its discretion at any time increase the Price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

8.2 FIXED NETWORK SERVICES

8.2.1 Save where, and to the extent that, any Promotional Terms apply, the Charges will be as detailed in the Tariff or unless, and as, stated on the Order Form.
8.2.2 The Company shall have the right to alter the Charges from time to time by publishing changes to the Tariff at www.ebbe.co.uk (or at such other URL as is notified to the Customer by the Company from time to time) and such changes shall take effect;
(a) no earlier than thirty days after such publication in the event of changes which may be of material detriment to the Customer; and
(b) no earlier than one day after such publication for all other changes, and if the Customer wishes to object to any proposed change which is of material detriment to the Customer, then the Customer must notify the Company in writing (addressed to Customer Services, Ebbe Fone Galleria, 1-2 Kingsway Buildings, Kingsway, Manchester, M19 1PH within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by the Company of any notice in accordance with condition 8.2.2(a) shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.
8.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Any invoices issued by the Company in respect of the Charges for Fixed Network Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
8.2.4 Line rental is payable from the Connection Date.
8.2.5 If the Customer has agreed to a Monthly Minimum Call Spend and at the end of any month, the Customer has not incurred the Monthly Minimum Call Spend, or if the Customer terminates the Contract in any way other than pursuant to condition 13, the Customer will be liable to pay to the Company, the difference between the Charges incurred during that month in relation to call spend and the Monthly Minimum Call Spend.
8.2.6 The Company reserves the right to apply a monthly minimum threshold on call spend of at least £10.00 per Customer account (or such other sum as notified to the Customer by the Company in writing from time to time), to keep the account operating at a viable level. This charge shall only apply to the telephone services element of Fixed Network Services.
8.2.7 Call Commissions

(a) Subject to paragraphs (d) and (e) below, the Company will pay Call Commissions to the Customer in respect of calls to each applicable Premium Rate Service and/or other End User Service delivered to and received by a Number at the rate and in the amount set out on the Order Form or in the Tariff. (b) Following the end of each calendar month, the Company will submit a statement to the Customer setting out the number and duration of all such calls delivered and received by the Customer in respect of Premium Rate Services and/or other End User Services. Following receipt of the statement the Customer shall submit an invoice to the Company in the amount shown as owing on the statement, or where agreed by the parties, the Company shall implement a self-invoicing process on behalf of the Customer. The Company shall pay the Call Commission within thirty days of the date of receipt of such invoice.
(c) All Call Commissions invoiced by either party hereunder are exclusive of VAT and shall be paid together with VAT at the appropriate rate.
(d) The Company shall not pay Call Commissions in respect of any call which it reasonably believes may have originated outside the United Kingdom.
(e) Call Commission shall not be payable on invoice balances of £10 or less (or such other sum as notified to the Customer by the Company in writing from time to time). Invoice balances shall not roll over from one month to the next.
8.2.8 Unless the Customer is a Microenterprise or Small Enterprise Customer or Not-For-Profit Customer (in which case condition 8.2.9 shall apply), without prejudice to condition 8.2.2, the Company shall increase the Charges for the Fixed Network Services in the April immediately following the Effective Date by the percentage equal to the CPI Percentage (ignoring negatives) plus 3.9%. For example (without limitation), if the Core Subscription Charge for Fixed Network Services is £15 per month on the Commencement Date, and the Rate of CPI (for illustration purposes only) announced in January is 2.0%, the Customer's Core Subscription Charge will increase to £15.89 on the Customer's first April bill (i.e. £15 x 1.059 = £15.89). If the following year's Rate of CPI was announced in January as 2.5% (for illustration purposes only), the Customer's Core Subscription Charge will increase to £16.91 a month (i.e. £15.89 x 1.064 = £16.91).
8.2.9 If the Customer is a Microenterprise or Small Enterprise Customer, or Not-For-Profit Customer, the Company shall in respect of Fixed Network Services (where a Price Increase Amount is stated) on the first Price Increase Date following the expiry of pricing stated on the Order Form increase the Core Subscription Charge of each such Fixed Network Services by the Price Increase Amount. In respect of all Charges other than the Core Subscription Charge, without prejudice to condition 8.2.2, the Company shall increase such Charges for the Fixed Network Services in the April immediately following the Effective Date by CPI Percentage (ignoring negatives) plus 3.9%. For example (without limitation), if the Charge for calls outside any allowance or bundle included within the Core Subscription Charge is £1 per minute on the Commencement Date, and the Rate of CPI (for illustration purposes only) announced in January is 2.0%, the Customer's Charge for a minute of the relevant call will increase to £1.06 on the Customer's first April bill (i.e. £1 x 1.059 = £1.06). If the following year's Rate of CPI was announced in January as 2.5% (for illustration purposes only), the Charge will increase to £1.13 per minute (i.e. £1.06 x 1.064 = £1.13). The Company shall give the Customer not less than one month's notice of such increases.

8.3 MAINTENANCE SERVICES

8.3.1 The Customer shall pay to the Company the Annual Support Charge in accordance with condition 9.3. Any invoices issued by the Company in respect of the Charges for Maintenance Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
8.3.2 The Company shall have the right to alter the Annual Support Charge from time to time by giving the Customer not less than fourteen days' notice.

8.4 VALUE ADDED TAX

All sums referred to under these Conditions, the Order Form, any Promotional Terms and any Service Specific Conditions are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of the relevant invoice.

8.5 TEMPORARY SERVICES

If the Customer orders a temporary Service, the Company may charge the Customer for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

9. PAYMENT

9.1 EQUIPMENT

9.1.1 A deposit equal to at least one half of the Price is payable by the Customer at the time of the placing of the relevant order. The balance of the Price as defined in condition 8.1.1 is payable immediately upon completion of Delivery (subject to condition 4.1.5)

9.2 FIXED NETWORK SERVICES

9.2.1 Subject to condition 9.2.2, the Customer shall be invoiced monthly in arrears by the Company and shall pay the Charges by Direct Debit within seven (7) days of the date of the invoice (unless otherwise expressly agreed with the Company and set out on the Order Form).
9.2.2 Line rental is payable monthly in advance, unless expressly agreed in writing by the Company.
9.2.3 Where the Company is notified by Phone-paid Services Authority that:
(a) any sums payable by the Customer to Phone-paid Services Authority or to any compensation fund or bond established by Phone-paid Services Authority have not been paid; and/or
(b) the Customer or any Information Provider is in breach of the Code; the Company may withhold all sums due to the Customer until the Company has been notified by Phone-paid Services Authority that all such sums, fines, administrative charges or other sums payable to Phone-paid Services Authority under the Code have been paid in full or any breach has been remedied, and if requested by Phone-paid Services Authority the Company may pay such sums to Phone-paid Services Authority in settlement of amounts owed to Phone-paid Services Authority. In the event that amounts are paid by the Company to Phone-paid Services Authority to settle amounts owed by the Customer then such amounts shall be deducted from any amounts owed by the Company to the Customer.

9.3 MAINTENANCE SERVICES

9.3.1 Unless otherwise agreed, the Customer will pay the Annual Support Charge to the Company by Direct Debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out in the Order Form.
9.3.2 Where the Company has agreed to raise an Annual Support Charge annually, the Customer will pay the charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date.
9.4 If payment of any sum payable to the Company is not made on or before the due date, the Company shall be entitled to charge interest thereafter on such sum at either the rate of eight (8)per cent per annum above the current base rate of The Bank of England from time to time or, if higher, such rate as the Company would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.
9.5 Unless e-billing is expressly not required on the Order Form, invoices will be made available for download by the Customer and the Customer will be notified at the e-mail address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly not required on the Order Form, the invoice may be sent to the registered address of the Customer (or the address of the Customer) at an additional cost to the Customer as set out in the Tariff.
9.5.1 Copy invoices can be provided. A minimum administration charge of £15.00ex. Vat will be due in any instance that archived call data is required in addition to postage & packaging.
9.6 If the Company is unable, for whatever reason, to recover any sum due under the Customer's account within four days following the due date for payment, the Company reserves the right to forthwith suspend all or any of the Services.
9.7 If the Customer's account remains unpaid (in any part) the Company may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before the Company will reinstate the Service.
9.8 If the Customer's account remains unpaid (in any part) for a period of thirty days after the original due date for payment, the Services may then be terminated by the Company.
9.9 Without prejudice to the Company's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then:
9.9.1 the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. The Company may also charge the Customer a fee where it suspends a Fixed Network Service for non-payment; and
9.9.2 the Company reserves the right to refer the outstanding account to a debt collection agency. If the Company instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay the Company's costs payable to the agency, who will add the sum to the Customer's outstanding debt.
9.10 The Customer will ensure that the name of the account holder is the same as the name on the payment details provided.
9.11 If the Customer cancels an active Direct Debit instruction once a Contract has commenced, an additional administration fee will be added to the monthly invoice of £5.00 (or such other amount as may be notified to the Customer by the Company from time to time) until the Direct Debit is reinstated. The Company also reserves the right to charge the Customer a Direct Debit cancellation fee at its then applicable rate.
9.12 The Company may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between the Company or any other member of its Group and the Customer if:
9.12.1 the Company has reason to believe the Customer is in breach of the Contract; and/or
9.12.2 the Customer is (or the Company reasonably believes that the Customer is) conducting its business or using a Service illegally or unlawfully (including without limitation in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or
9.12.3 the Company has received notice from another network operator that payment will be withheld in respect of calls and the Company has satisfied itself on reasonable grounds that such event has occurred. The Customer will not be entitled to any payment of Call Commission in respect of such calls.
9.13 If any sum owed by the Customer to the Company under the Contract or any other contract with the Company is not paid by the due date, the Company may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with the Company.
9.14 Payment of all sums due to the Company shall be made without any set-off whatsoever.
9.15 If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within fourteen (14) days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:
9.15.1 less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or
9.15.2 more than five per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.
19.16 Payments made by Debit or Credit Card are subject to 2% processing fee. Charge Card are not acceptable.

10. SITES

10.1 To enable the Company to fulfil its obligations under any Contract:
10.1.1 the Customer shall permit or procure permission for the Company and any other person(s) authorised by the Company to have reasonable access to the Customer's Sites, Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as the Company requests.
10.1.2 The Company will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, it shall be liable to the Company for any costs and expenses which the Company incurs as a result of such cancellation, rescheduling and/or missed appointment.
10.2 At the Customer's request, the Company may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay the Company's reasonable charges for complying with such a request.
10.3 The Customer warrants, represents and undertakes that it has adequate health and safety provisions in place at its Sites.
10.4 The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment and/or Services at the Sites (save to the extent the Company has agreed in writing to do it).
10.5 In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days from the Connection Date the Company will be able to terminate the Contract forthwith by giving the Customer written notice without any liability. If the Customer has not managed to procure the necessary consents and the Company has commenced work the Company may ask the Customer shall, on request by the Company, refund to the Company the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.

10.6 The Customer shall provide the Company with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide the Company with full details of all other services in the vicinity of the proposed works.
10.7 The Customer is responsible for making the Site good after any work undertaken by the Company at a Site, including without limitation replacing and re-siting items and for re-decorating.
10.8 If the Customer is moving a Site, the Company must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Equipment. Unless otherwise requested, the Company, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Customer moves to a different exchange) to retain the Customer's relevant existing telephone number(s). If the Company can transfer the Customer's existing number to the new Site the relevant existing Contract will continue under the same terms and conditions. If the Company cannot transfer the Customer's existing relevant number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Contract.
10.9 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Customer will be responsible for the costs incurred by the Company for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by the Company to complete the transfer of the Services and Equipment.
10.10 If the Customer moves Sites and leaves the Equipment for the new owner/tenant, the Customer is required to inform them that the relevant Service will be discontinued if the Company is not contacted by the new owner/tenant within seventy two hours for the purpose of entering into a new contract with the Company for such services and subject in any event to the agreement of such a contract.
10.11 If at the new Site the Customer receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating such agreement.

11. LIMITATION OF LIABILITY

11.1 Unless otherwise stated in these Conditions (or any relevant Service Specific Conditions) the Company makes no warranty in respect of the supply of Equipment and/or Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a contract for the supply of the Equipment and/or Services are hereby excluded to the fullest extent possible, save for, and to the extent of, those warranties which cannot lawfully be excluded. If the Customer is a consumer, this shall be without prejudice to its statutory rights.
11.1.1 The Company does not warrant that the use of any of the Services it provides will be uninterrupted or error-free.
11.2 Subject to conditions 4.4.8, 11.3 and 11.5, in no circumstances shall the Company's liability, arising under or in connection with this Contract and whether in contract, tort (including without limitation negligence) breach of statutory duty or otherwise, to the Customer in respect of one incident or series of connected incidents in any one year, exceed 110% of the Price paid for Equipment and Installation Services and/or the Charges paid for Services (as the case may be) for the relevant Equipment and Installation Services and/or Services to which the claim or claims relate in the twelve months prior to the date on which the claim or claims arose.
11.3 Subject to condition 11.5, under no circumstances shall the Company be liable in any event under or in connection with the Contract and whether in contract, tort (including negligence) or otherwise for any:
11.3.1 loss of revenue;
11.3.2 loss of business;
11.3.3 loss of contracts;
11.3.4 loss of, damage to or corruption of data;
11.3.5 loss of anticipated savings;
11.3.6 loss of profits; or
11.3.7 any indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.
11.4 Neither party shall be liable to the other party for any breach of any provision of the Contract (whether in breach of contract, tort (including but not limited to negligence), or otherwise) caused by any reason outside the reasonable control or responsibility of that party including, without limitation, in respect of Fixed Network Services supplied by the Company, the failure of any Carrier to provide network capacity (or any element thereof) to the Company on which it was reliant for the purposes of the Contract, any Act Of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.
11.5 Nothing in these Conditions excludes or restricts either party's liability for:
11.5.1 death or personal injury resulting from that party's negligence or its employee's negligence (while acting in the course of their employment);
11.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;
11.5.3 any indemnity given under the Contract; and/or
11.5.4 for anything for which the parties cannot at law limit or exclude their liability.
11.6 The Customer agrees that any cause of action that it may have against the Company and/or any of its Group members (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose, otherwise, the Customer's cause of action is permanently barred.

12. CUSTOMER'S INDEMNITY

12.1 Without prejudice to any other rights of the Company, the Customer shall indemnify, keep indemnified and hold harmless the Company against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential loss (all three of which include without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:
a) breach by the Customer of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any responsibilities and/or liabilities of the Customer set out in the Contract; and/or
b) injury and/or damage suffered or incurred by or to any of the Company's (or any of its contractor's) employees
and/or equipment whilst on the Site.

13. TERMINATION AND CONSEQUENCES

13.1 Subject to conditions 13.3, 13.4 and 13.6 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an order has been accepted by the Company) to change or cancel an order:
13.1.1 at all in respect of Equipment; or
13.1.2 except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Services (which shall take effect in accordance with the applicable conditions), unless otherwise agreed in writing with the Company.
13.2 Subject to condition 13.6, in the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding line rental charges, any Monthly Minimum Call Spend, Annual Support Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Fixed Network Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment which is the subject of a Contract) and expenses incurred by the Company as a result of such changes or cancellation. Customer may terminate this Agreement after the Minimum Term in whole or in relation to a particular Service by providing Ebbe Fone Galleria Limited 90 Working Days notice in writing; and subject to clause 13.2, paying Ebbe Ebbe Fone Galleria Limited the applicable Termination Fees in respect of the Service or Services being terminated.
13.3 Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than thirty days' written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 13.3, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.
13.4 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under these Conditions (including without limitation non-payment of charges due) or any Service Specific Conditions and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party of what the breach is and requesting that the breach is remedied. Without prejudice to the generality of the foregoing, the Company shall be permitted to terminate the Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract under these Conditions (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by the Company of what the breach is and requesting that the breach is remedied.
13.5 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).
13.6 Where the Customer is a person who is not a communications provider nor a person who is a Customer for Fixed Network Services in relation to an undertaking carried on by him with more than ten (10) workers (and the same has been indicated in the Order Form), the Customer may cancel the provision of Fixed Network Services at any time prior to the commencement of the provision of those Fixed Network Services, without any form of charge or compensation being required to be paid to the Company.
13.7 The Company shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 5.6.
13.8 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this Contract which expressly or by implication is intended to survive, shall survive the termination or expiry of the Contract.
13.9 Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

14. SOFTWARE

14.1 Where the Company provides software to the Customer to enable the Customer to use the Services ("Software"), the Company will grant the Customer a non-exclusive, non-transferable licence and/or subcription to use the Software solely for the term and purposes of the Contract (and to extent necessary to use the relevant Services). If required by the Company, the Customer shall sign such end user licence and/or subcription agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Customer to be able to use the Software.
14.2 Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile reverse-engineer or modify the Software, or copy the relevant manuals or documentation.

15. CALL MONITORING

The Customer agrees that the Company may monitor and record calls made to or by the Company by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by the Company under this condition.

16. CONFIDENTIALITY AND DATA PROTECTION

16.1 The Company and the Customer shall comply with all requirements of Applicable Privacy Law in the performance of the Contract.
16.2 The Company and the Customer will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and the Company will not, without the consent of the other, disclose such information to any person other than:

16.2.1 their employees, contractors or professional advisers who shall require the information in order for the Customer or the Company to fulfil its obligations under the Contract; or
16.2.2 in the case of the Customer, its users to the extent that they are required to use or access the Service.
16.3 Information shall not be treated as confidential if it is:
16.3.1 lawfully in the public domain; or
16.3.2 lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or
16.3.3 (a) obtained from a third person who is entitled to disclose it; or (d) replicated independently by someone without access or knowledge of the information.
16.4 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by the Company in connection with the Contract the Customer will notify the Company immediately of the request and give the Company at ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).
16.5 The Customer acknowledges and agrees that the Company may process user Personal Data as Data Controller (as defined within the Applicable Privacy Law) and/or confidential information obtained from the Customer during or following the completion of the Order Form or as a result of the Customer's use of the Equipment or Services and/or arising from or out of the provision of the Equipment or Services, for the following purposes:
16.5.1 administering the Customer's account (including, without limitation, arranging finance with lessors of the Equipment, liaising with any Carriers who are relevant to the provision of the Fixed Network Services, and sharing the data with members of the Company's Group);
16.5.2 notifying the Customer of changes to the Service, including (without limitation and unless stated otherwise on the Order Form) contacting the Customer regarding potential and/or actual enhancements to or offers in relation to the Service;
16.5.3 enabling the Company to supply the Service and Equipment to the Customer; and
16.5.4 for invoicing purposes.
16.6 The Company will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about the Company's (or any member of its Group) own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that the Company does not do so on the Order Form.
16.7 If the Customer wishes to have details of the credit reference or the fraud prevention agencies the Company uses to obtain information about the Customer, or receive a copy of the information the Company holds about them, it may do so by submitting a request in writing for a copy of the information to the Company's Data Controller at Ebbe Fone Galleria 1-2 Kingsway Buildings, Kingsway, Manchester, M19 1PH stating the Customer's full name, address, account number and phone number. The Company may charge a reasonable administration fee for providing such information.
16.8 The Customer warrants, undertakes and agrees that it will grant or procure from its employees and other personnel such consents to the use of Personal Data (referred to above) as may be necessary to enable the Company to use such data for the purposes described in this condition 16.

17. CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT

17.1 The Company may change the Conditions and/or Service Specific Conditions at any time and will publish any change in line with condition 17.2.
17.2 The Company will publish any changes to the Conditions and/or Service Specific Conditions online at www.ebbe.co.uk (or at such other URL as is notified to the Customer by the Company from time to time):
17.2.1 at least thirty days before the change is to take effect for changes that may be of material detrimental to the Customer; and
17.2.2 at least one day before the change is to take effect for all other changes.
17.3 If the Customer wishes to object to any proposed change which is of material detriment to the Customer, the Customer must notify the Company in writing (addressed to Customer Services, Ebbe Fone Galleria, 1-2 Kingsway Buildings, Kingsway, Manchester, M19 1PH) within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by the Company of any notice in accordance with condition 17.2.1 shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition 17.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.
17.4 Without liability to the Customer, in order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on capped price call tariffs (if any) the Company may at its sole discretion on not less than seven days' notice:
17.4.1 limit call price caps to the first four hours of calls per day; and/or
17.4.2 remove the relevant call price caps from the Customer's pricing and tariff should call profile deviate significantly from the Company's standard call profiles and notify the Customer of the new pricing to apply in respect of the relevant Fixed Network Services.
17.5 In order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on bundled minute call packages (if any) the Company may at its sole discretion on not less than seven days' notice remove the relevant bundled minute call package from the Customer's pricing and tariff should the Customer's call profile deviate significantly from the Company's standard call profile and over seventy five per cent of the Customer's bundled minutes be used in any month.
17.6 The Company may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified from time to time.

18. FRAUD AND SECURITY

18.1 The Customer must ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept confidential and are only used by authorised users. The Customer will inform the Company immediately if the Customer knows or suspects (or ought reasonably to know or suspect) that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer will not change or attempt to change a user name without the Company's written consent.
18.2 The Company reserves the right (at the Company's sole discretion):
18.2.1 to suspend user names and password access to the Services if at any time the Company thinks that there has been or is likely to be a breach of security; and
18.2.2 to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer's uses in connection with the Services.
18.3 The Customer will inform the Company immediately of any subsequent changes to the information the Customer supplies to the Company in connection with the Contract.
18.4 The Customer accepts and acknowledges that the Services are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services.
18.5 The Customer acknowledges that the Company has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled, except where the Company agrees to be contractually responsible under the Maintenance Services.
18.6 The Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment or Services by the Customer or any third parties (who are not employees of the Company) and the Customer agrees to pay all additional charges related to such fraudulent and/or unauthorised use. Customers are therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.
18.7 Any assistance given by the Company in relation to fraudulent and/or authorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond the Company's reasonable control (save for any fraud and/or authorised use by an employee of the Company acting in that capacity).

19. ANTI-BRIBERY

19.1 The Customer shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;
19.1.1 comply with all applicable Anti-Bribery Laws;
19.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;
19.1.3 comply with the Company's Ethics and Anti-bribery Policy (available at www.ebbe.co.uk or at such other URL as is notified to the Customer by the Company from time to time) as the Company may update them from time to time ("Relevant Policies");
19.1.4 have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;
19.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;
19.1.6 not do or omit to do any act or thing which causes or may cause the Company and/or its Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;
19.1.7 without prejudice to condition 19.1.16, not do or omit to do any act or thing which causes or may cause the Company or any member of the Company's Group to be guilty of an offence under section 7 Bribery Act (or would or may do so if the Company was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and
19.1.8 provide the Company and any member of the Company Group (at the Customer's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.
19.2 The Customer shall:
19.2.1 promptly report to the Company and any member of the Company's Group any request or demand for any financial or other advantage of any kind received in connection with the performance of the Contract by it or by its officers, employees, agents or any other person who performs the services for or on behalf of it in connection with the Contract; and
19.2.2 upon request, certify in writing signed by a director of the Customer that the Customer has complied with all of its obligations under this condition 19. The Customer shall provide such supporting evidence of compliance as Company or any member of the Company's Group may reasonably request.
19.3 The Customer warrants to the Company and all members of the Company's Group that it has not, and its officers, employees, agents and any other persons who perform the services for or on behalf of it in connection with the Contract have not breached any applicable Anti-Bribery Laws; been convicted of any offence involving bribery, corruption, fraud or dishonesty; offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act; done or omitted to do any act or thing which constitutes or may constitute an offence under the Anti-Bribery Laws; done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or commit an offence under any Anti-Bribery Law; done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 Bribery Act; or given any financial or other advantage, inducement or reward to any person in connection with the awarding or continuation in force of this Contract.
19.4 The Company and/or any member of the Company's Group may terminate the Contract immediately if the Customer is in breach of any of its obligations under this condition 19 or if the Company or any member of the Company's Group has reasonable cause to believe that such a breach has occurred or may occur. If the Company or any member of the Company's Group terminates the Contract in accordance with this condition 19.4, the Customer shall not be entitled to claim any compensation or any further remuneration from the Company or any member of the Company's Group.

20. GENERAL

20.1 Subject to any deemed acceptance by the Customer under condition 8.2.2 and/or condition 17.3, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.
20.2 The Contract (including in relation to non-contractual matters) shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).
20.3 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

20.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address or fax number, given on the Order Form (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition
20.5 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
20.6 Any director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Customer to the obligations set out in these Conditions and any relevant Service Specific Conditions in all respects.
20.7 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
20.8 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the consent of the Customer however, the Customer shall, if the Company requires, execute such deeds and/or documents as may be necessary or required by the Company to give effect to any such dealing in such rights and/or obligations.
20.9 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
20.10 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract (or in the case of multiple Contracts the last Contract to be terminated or expire), actively solicit or entice away from the Company, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services to the Customer. Any consent given by the Company in accordance with this condition 22.9 shall be subject to the Customer paying to the Company a sum equivalent to twenty per cent of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.
20.11 The Company and the Customer agree that the Employment Regulations will not apply to transfer the employment or engagement of any Employee to the Company in connection with the Contract or the termination or expiry of all or part of any contract between the Customer and a Contractor or any other provision of the Services.
20.12 The Customer agrees to indemnify and keep indemnified the Company against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by the Company arising out of or connected with:
20.12.1 the transfer or alleged transfer of the employment or engagement of any Employee to the Company pursuant to the Employment Regulations or otherwise; and
20.12.2 the employment or engagement or termination of employment or engagement by the Customer or a Contractor and/ or any Subcontractor of any Employee.
20.13 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of the Company in connection with the Services.
20.14 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
20.15 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, that provision will apply with whatever minimum modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.
20.16 Save where the context otherwise requires, in these Conditions a reference to a "person" shall include a company, body corporate, unincorporated association, state, governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate).
20.17 Except with the prior written consent of the other party, neither party shall:
20.17.1 make any public statement about the Equipment and/or Services or otherwise publicise the Contract or any information relating to it; or
20.17.2 use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.
20.18 Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except, and to the extent, that the Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.
20.19 Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the Contract.
20.20 The Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.