

## AGREEMENT FOR THE PROVISION OF NETWORK SERVICES BY CENTRIX LIMITED

### 1. Definitions and Interpretation

**Agreement:** means these Terms and Conditions together with the Order.

**Associated Company:** means any company which is a parent company of the relevant entity or a subsidiary of such parent company, where parent company and subsidiary have the meanings set out in Section 736 of the Companies Act 1985.

**BT:** means British Telecommunications plc and its Associated Companies.

**Charges:** means any or all of the charges and fees payable by the Customer for the Service pursuant to this Agreement.

**Confidential Information:** means any information, whether communicated orally or in documentary or other form, which relates to the business of the Supplier including, without limitation, any information relating to products, customers, pricing, policies, methods, business plans and strategies, technical processes and financial affairs, in all cases whether expressly stated to be confidential or not.

**Connection Charge:** means the nonrefundable charge payable by the Customer for installation and connection to the System as specified in the Order or otherwise notified by the Supplier.

**Connection Point:** means the Router or Switch supplied by Convergence Group which is then connected to the customer equipment..

**Customer:** means the party purchasing the Service, as named in the Order.

**Early Termination Fee:** means the Rental for the balance of the Minimum Period that remains outstanding and/or a Charge to recover the Supplier's lost contribution and margin for the remainder of the Minimum Term, being a maximum sum equal to 30% of the Agreed Monthly Revenue (as seen on the order document) or the Customer's arithmetic average monthly invoice based upon the Customer's last three full calendar month's invoices, whichever is higher, multiplied by the number of complete calendar months left in the Minimum Term after the date of termination (but including the month in which the date of termination falls) together with a cancellation fee of £30.00 + VAT. In addition, the Customer shall pay all reasonable third party costs incurred by the Supplier in securing payment of such Charges and fees.

**IPR:** means all intellectual property rights including, without limitation, copyright, patents, trade marks, registered designs, design rights, mask works, know how and all other similarly protected rights.

**Minimum Period:** means in relation to each Access Circuit, a minimum of 36 months from date of installation. In relation to bandwidth, any bandwidth changes will be supplied for a minimum period of 30 days. Bandwidth changes will not affect the minimum contract period for the Access Circuit.

**Offending Material:** means any material, data, images or information that is:

- (i) in breach of any law, regulation, code of practice or Supplier's acceptable use policy, or
- (ii) abusive, indecent, defamatory, obscene or menacing or otherwise offensive, or
- (iii) in breach of confidence, IPR, privacy or any right of a third party.

**OFCOM:** means the Office of Communications or any similar office that may be appointed in addition or in substitution.

**Order:** means the Service Order Agreement signed by the parties or such other document that the Supplier deems to constitute the Order.

**Rental:** means the monthly fee (including access circuit rental, equipment rental, and other rental) payable by the Customer for the Service, as set out in the Order or otherwise notified by the Supplier.

**Service:** means any and all of the services that the Supplier has agreed to supply to the Customer, as set out in the Order.

**Site:** means any or all of the Customer's sites at which the Supplier is providing the Service.

**Supplier:** means Centrix Limited whose registered office is at Winchfield Lodge, Old Potbridge Road, Winchfield, Hampshire RG27 8BT.

**Supplier's Equipment:** means any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Service.

**System:** means the network that the Supplier uses to provide the Service.

**Working Day:** means 09:00 to 17:30 Monday to Friday but excluding public holidays in the United Kingdom recognized by the Supplier. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.

### 2. Duration and Scope of this Agreement

2.1 This Agreement commences on the date of acceptance of the Order by the Supplier and will continue (subject to Clause 7) until terminated by either Party on ninety (90) days written notice, to expire on or after the end of the Minimum Period. If the Customer terminates this Agreement after the Minimum Term and fails to give such ninety (90) days written notice, the Customer shall pay a sum equal to three times the Customer's arithmetic average monthly invoice based upon the Customer's last three full calendar month's invoices, together with £30.00 plus VAT. In addition, the Customer shall pay all reasonable third party costs incurred by the Supplier in securing payment of such sum.

2.2 If the Customer terminates this Agreement during the Minimum Period and has no right to terminate under Clause 7, or if the Service ceases to be provided on the relevant Access Circuit during the Minimum Period, the Customer shall pay, in addition to other sums payable up to the date of termination, the Early Termination Fee.

2.3 Until termination for whatever reason, the Supplier agrees to provide the Service to the Customer in accordance with this Agreement in consideration of the agreement of the Customer to use the Service in accordance with this Agreement and to pay the Charges when they are due.

2.4 The Customer shall provide a suitable and safe working environment for the Supplier, BT and anyone acting on either of their behalf, to the Customer's premises.

2.5 The provision of the Service requires that BT or other communications provider undertake the installation of an Access Circuit. Accordingly, it is agreed that any act, default or delay by BT or other communications provider in carrying out such installation or otherwise relating to or affecting the Service shall not be the responsibility of the Supplier.

2.9 The Customer's equipment to be used connected with the Service shall be connected by means of Connection Points and ancillary wiring. If the Customer wishes a Connection Point to be moved to another place within the Site, the Supplier may agree, subject to payment of the Supplier's applicable charges.

### 3. The Supplier's General Obligations

3.1 The provision of the Service is subject to all relevant licenses, infrastructure (or interconnect arrangements) and consents being in place. The Supplier shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. The Customer shall obtain any consent or facility that is necessary or desirable for the Supplier to provide the Service on the Site.

3.2 The Supplier shall exercise the reasonable care and skill of a competent communications operator. The Service cannot be guaranteed to be fault free but the Supplier shall provide the same quality of service to the Customer as it provides from time to time to its customers generally.

3.3 The Customer shall report any fault to Convergence Group, where it will be dealt with in accordance with the agreed fault repair service. Where no Supplier's Equipment is installed, the Supplier may request that the Customer first have its designated maintainer check the Customer's equipment. If the Supplier agrees to fix a fault that is caused by the Customer or that otherwise falls outside the responsibility of the Supplier or where no fault is found, the Supplier may charge the Customer for any work that the Supplier has undertaken at its applicable man-hour rate.

### 4. The Customer's Obligations

4.1 The Customer shall not utilize and shall ensure that no other person uses the Service:

4.1.1 For storing, reproducing, transmitting, communicating or receiving any Offending Material; or

4.1.2 Fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or

4.1.3 Contrary to instructions that the Supplier may give to the Customer from time to time.

4.2 The Customer will provide the Supplier with all information that the Supplier needs and allow the Supplier to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures allowed by the Data Protection Act 1998 and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so by OFCOM, the law or any relevant authority.

4.3 The Customer shall keep all of the Supplier's Equipment at the Site safe and shall pay for the replacement and/or repair of any of the Supplier's Equipment that is lost, damaged (otherwise than by fair wear and tear) or destroyed. The Customer shall not alter or move any of the Supplier's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Supplier's Equipment or the System in any way. The Customer will allow the Supplier to inspect, test, modify, change, add to, replace or remove any Supplier's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Supplier access at all times to collect any of the Supplier's Equipment in the Customer's possession.

4.4 The Customer shall at its own cost arrange for the required Site-specific conditions, as notified by the Supplier. This will include, without limitation, mains electricity supply, connection points and computer terminals. The Customer shall prepare the Sites in accordance with the Supplier's reasonable instructions and reinstate them at the Customer's expense after the Supplier has completed any work necessary for the Supplier to be able to provide the Service.

4.5 The Customer shall ensure that any equipment (excluding Supplier's Equipment) that it uses in connection with the Service meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Supplier to do so at the Customer's expense.

4.6 The use of computing equipment and/or computer software owned and/or controlled by the Supplier (including computer networks and systems accessed via the network) is permitted for bona fide purposes and is subject to authorization. Unauthorized or improper use of these facilities is a breach of this Agreement and may give rise to withdrawal of the facilities and/or proceedings under the Computer Misuse Act 1990.

4.7 The Customer warrants that it is the owner of, or that it is duly authorized by the owner of, any trademark or name that it wishes to use as its Domain Name and use as part of its URL.

4.8 Where Centrix Ltd or one of its suppliers offers to undertake Domain Name registration on behalf of the Customer, the Customer will reimburse Centrix Ltd for any registration fees paid by Centrix Ltd to the Internet registration authorities and will pay any subsequent registration and all rental fees.

4.9 Centrix Ltd reserves the right to require the Customer to select a replacement Domain Name and may either refuse to provide or may suspend Service if, in Centrix's opinion, there are reasonable grounds for Centrix Ltd to believe that the Domain Name is, or is likely to be, offensive, abusive, defamatory, obscene or which infringes the rights of any person in a corresponding trademark or name.

4.10 If the Customer accesses the Service via a LAN, the Customer is responsible for:

4.10.1 providing and maintaining a suitable LAN and Internet Protocol ("IP") router capable of interfacing satisfactorily with the Service;

4.10.2 configuration of the IP router; and

4.10.3 the appointment of a System Administrator.

The Customer acknowledges that Centrix Ltd is not responsible for providing any support whether technical or otherwise, to the Customer's LAN.

4.11 Where IP addresses are allocated to the Customer, by Centrix Ltd or one of its Partners, these are for use in connection only with the Service and all rights to those IP addresses belong to Centrix Ltd. The Customer cannot sell them or agree to transfer them to anyone else and must not try to do so. If this Contract is terminated for any reason the IP addresses will revert to Centrix Ltd.

4.12 Where a Customer takes a Provider Independent Resources (PIR), then this range will be managed on the Customer's behalf by Centrix Ltd or one of its Partners. Centrix Ltd is required by Reseaux IP Europeens (RIPE) to include the following conditions where the Customer takes PIR with the Service:-

4.12.1 Centrix Ltd is responsible for liaising with the Customer and the Customer shall respond to Centrix's requests in order to keep registration records up to date;

4.12.2 The Customer shall provide up-to-date registration data to Centrix Ltd and the Customer acknowledges and agrees that some or all of this registration data will be published in the RIPE WHOIS database; and

4.12.3 The Customer acknowledges and agrees that none of the PIR may be sub-assigned to a third party, registration fees must be paid by the Customer to Centrix Ltd for the PIR, the PIR will return by default to the RIPE Network Coordinating Centre if the Customer cannot be contacted and/or any registration fees are not paid to Centrix Ltd and the use of PIR is subject to RIPE policies as published on the RIPE web site and which may be amended from time to time.

## **5. Payments**

5.1 The Supplier shall be entitled to send an invoice to the Customer for the Connection Charge when the Network Service is ordered and for the Rental quarterly in advance. The Customer shall pay all Rental and Connection Charges whether the Customer or someone else uses the Service.

5.2 The Customer shall pay any cancellation charges, abortive visit charges, engineering visit or site survey charges, or maintenance service charges imposed on the Supplier by BT or other Supplier and relating to the Service, save where such abortive visit or service maintenance charges arise through the Supplier's default.

5.3 The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.

5.4 The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.

5.5 The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier within fourteen days of the date upon them. If the Customer's credit rating decreases at any time, the Supplier shall be entitled to revise the credit terms to require payment upon invoice or in less than 14 days. If the Customer fails to make payment by this date in full, in addition to the Supplier's right to suspend set out in Clause 6.1, the Supplier may charge interest at the rate of 8% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full. Time is of the essence in relation to payments due from the Customer and the Supplier reserves the right to claim that any failure to pay on time is a repudiatory breach by the Customer.

5.6 At any time after the expiry of the Minimum Period, the Supplier may change the level of its Charges after giving the Customer four (4) weeks written notice of its intention to do so. This notice may be included in an invoice to the Customer.

5.7 The Supplier may also change the level of its Charges during or after the Minimum Period, retrospectively as well as prospectively, as a consequence of (a) any OFCOM direction, determination, order or similar decision, or (b) any change in BT's wholesale charges to the Supplier. In both cases, the Supplier shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated. This notice may be included in an invoice to the Customer.

5.8 Where the Supplier agrees to do work outside a Working Day at the request of the Customer, the Supplier may charge the Customer in accordance with the Supplier's applicable man-hour rate.

## **6. Suspension and Variation of the Service**

6.1 The Supplier may, in its sole discretion and upon giving the Customer written notice, suspend or vary the Service without compensation (unless due to the default of the Supplier) for any period during which:

6.1.1 The Supplier is required to do so in order to avoid a breach of the authorization of the Supplier under the Communications Act 2003, as amended from time to time;

6.1.2 The Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, an emergency services organization or a competent administrative authority;

6.1.3 The Supplier reasonably suspects or believes that the Customer is in breach of Clause 4.1 or the Customer is in breach of Clause 5;

6.1.4 The Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Supplier; or

6.1.5 The Supplier's contract with BT or other supplier relating to the Services is suspended, varied or terminated.

6.2 The Customer acknowledges that BT or other Supplier may make alterations to the service (including, without limitation, conversions, shifts and reconfigurations) that may result in disruption.

6.3 The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Service where suspension or variation is implemented as a result of any act or omission of the Customer.

6.4 The Supplier may at any time suspend the Service or any part of it, without liability:

6.4.1 To vary the technical specification of the Service in order to comply with any relevant law or regulation or direction from a competent authority; or

6.4.2 To repair, maintain or improve the Service;

The Supplier will, during such suspension under this Clause 6.4, try to ensure that minimum disruption is caused to the Service.

## **7. Termination**

7.1 Either Party may immediately terminate this Agreement by written notice if the other Party commits a material breach that is not capable of being remedied.

7.2 Either Party may serve written notice requiring the other Party to remedy within thirty (30) days of receipt of the notice a material breach of this Agreement that is capable of remedy. In the absence of a remedy in this period, the Party that served notice to remedy may immediately terminate this Agreement by written notice.

7.3 Either Party may immediately terminate this Agreement by written notice if the other Party commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non payment of monies owing.

7.4 If this Agreement is signed before the Supplier has completed its credit check of the Customer, the Supplier shall be permitted to terminate this Agreement immediately by written notice if the Customer fails to pass the Supplier's credit policy

7.5 The Supplier shall be permitted to terminate this Agreement immediately by written notice at any time for the reasons set out in Clauses 6.1.1 and 6.1.2.

7.6 The rights to terminate this Agreement given by this Clause 7 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **8. Limitations and Exclusions of Liability**

8.1 This Clause 8 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) to the Customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of this Agreement. Except as set out in this Agreement, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Service, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law. The Supplier's duty in performing any obligations under this Agreement is only to exercise reasonable care and skill of a reasonably competent communications provider.

8.2 Subject to Clause 8.4, the Supplier's entire liability for non-fraudulent representation, or implied warranty, condition or other term, or under any duty at common law, or in tort (including negligence) or under the express terms of this Agreement shall not in the aggregate, in any period of 12 months, exceed the Charges paid in respect of that 12 month period. If for any reason this limit of liability shall be found to be unlawful or invalid by a court of competent jurisdiction, the Supplier's entire liability as referred to in this clause shall not exceed £1,000 (one thousand pounds sterling) for any one incident or series of related incidents and £2,000 (two thousand pounds sterling) in aggregate during the term of this Agreement.

8.3 Notwithstanding anything to the contrary in this Agreement, but subject to Clause 8.4, the Supplier shall not be liable to the Customer under the express terms of this Agreement or by reason of any non-fraudulent representation, or implied warranty, condition or other term, or any duty at common law, or any tort (including negligence), for any loss of profits or revenue, loss of income or business, loss of goodwill or reputation, loss of anticipated savings, loss of data, loss of use, or damages, loss or expenses payable by the Customer to any third party or any indirect or consequential or special loss or damage whatsoever and howsoever caused.

8.4 The Supplier shall not exclude or restrict liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.

8.5 Each of the Supplier and the Customer acknowledges that it considers the provisions of this Clause 8 to be reasonable, taking account of the other terms of this Agreement (including the Charges) and its ability to insure against losses which may arise from any breach by the other Party of its obligations under this Agreement.

8.6 The provisions of this Clause 8 shall survive termination or expiry of the Agreement.

## **9. Confidentiality and Data Protection**

9.1 The Customer agrees to keep all Confidential Information confidential, to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this Agreement. This Clause shall not apply to information that the Customer can prove:

9.1.1 Is in the public domain otherwise than by the Customer's breach;

9.1.2 It already had in its possession prior to obtaining the information directly or indirectly from the Supplier; or

9.1.3 A third party subsequently disclosed to the Customer free of restrictions on disclosure and use. This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from the Supplier.

9.2 The Customer may disclose Confidential Information if required to do so by law, regulation or rules of a securities exchange or other regulatory authority, but only to the extent of the relevant requirement. The Customer shall promptly inform the Supplier of the requirement and will co-operate with the Supplier in the disclosure.

9.3 The use of any information may be subject to (and therefore the Customer shall comply with) the Data Protection Act 1998, EU Data Protection Directives and all other applicable laws relating to the processing of personal data and privacy.

## **10. Ownership**

All IPR relating to the subject matter of this Agreement shall vest in, and ownership of the Supplier's Equipment and the System (including any works performed by the Supplier to connect the Site to the System) shall remain with the Supplier or its licensors, as appropriate. The Customer acknowledges that it shall have no license, right, title or interest in or to any IPR of the Supplier or its licensors or the Supplier's Equipment or the System, except as expressly set out in this Agreement. This Clause shall survive termination or expiry of the Agreement.

## **11. Circumstances Beyond Reasonable Control**

11.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations,

national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay.

11.2 If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

## **12. Notices**

12.1 Notices must be written and delivered by hand or first class prepaid post. The address for service on the Supplier (subject to any change notified by the Supplier) is: Managing Director, Centrix Limited, Winchfield Lodge, Old Potbridge Road, Winchfield, Hampshire. RG27 8BT. The address for service on the Customer is as set out in the most recent invoice.

12.2 A notice will be deemed served as follows:

12.2.1 On hand delivery, except where this is outside a Working Day, in which case the next Working Day;

12.2.2 Two Working Days after posting (proof that the envelope containing the notice was properly addressed, prepaid and posted and that it has not been returned to the sender shall be proof of posting).

## **13. General**

13.1 Headings in this Agreement shall not affect interpretation.

13.2 A delay in enforcing rights under this Agreement shall not be a waiver, as any waiver must be expressly granted in writing.

13.3 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it.

13.4 The termination or expiry of this Agreement shall be without prejudice to the rights of either Party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.

13.5 This Agreement contains the entire agreement and supersedes all other agreements and understandings between the Parties with respect to its subject matter. Any terms proposed by the Customer that are not written in these Terms and Conditions shall be invalid. Subject to Clause 8.4, each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in this Agreement, and that its only remedy can be for breach of contract.

13.6 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

13.7 This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.

13.8 The Supplier may change this Agreement at any time without requiring the agreement of the Customer to the extent that the Supplier's contract with BT relating to the Service is changed.

13.9 The Supplier may transfer or assign its rights and obligations to any of its Associated Companies and may sub-contract any of its obligations. Otherwise, neither Party may transfer, assign, sub-license or subcontract any rights, licenses or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld or delayed.

13.10 English law shall govern the validity, construction and performance of this Agreement and the Parties submit to the exclusive jurisdiction of the English Courts.

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