

The Customers attention is drawn to clause 12 (Customer's Indemnity) and clause 13 (Exclusion and Limitation of liability)

1. Interpretation

1.1. in these Terms:

<p>"Acceptable Use Policy" means the acceptable use policy in relation to the Broadband Service as prescribed by the Company from time to time;</p> <p>"Connection Fee" means in relation to Broadband Services and/or Shine Cloud Connectivity Connections, the connection fee as specified in the Service Agreement or as otherwise specified by the Company from time to time;</p> <p>"Additional Charge" means the Company's charges for Additional Services as referred to in clause 10.7 at such rates as specified by the Company from time to time;</p> <p>"Additional Services" means the services referred to in clause 10.4;</p> <p>"Administration Charge" means the administration charges referred to in clause 11.15 (or such other amounts as may be specified as the administration charge by the Company from time to time);</p> <p>"Associate Company" has the meaning given in section 435(6) of the Insolvency Act 1986;</p> <p>"BT" means British Telecommunications PLC (registered in England & Wales under number 1800000) and whose registered office is 81 Newgate Street, London EC1A 7AJ;</p> <p>"Broadband Service" means the service allowing access to the internet together with the services and facilities provided by the Company in connection with such internet access;</p> <p>"Calls" means telephone calls made or received using any one or more of the Telephone Services;</p> <p>"Call Out" means any attendance at the Customer Site;</p> <p>"Call Out Charge" means call out charges at the rate specified in the Service Agreement or at such other rate as may be specified by the Company from time to time.</p> <p>"Company" means Shine Networks Limited registered in England & Wales under company number 9554545 whose registered office is Langstone Technology Park, Langstone Road, Havant, Hampshire, PO9 1SA</p> <p>"Company Equipment" means such equipment owned or used by the Company as is necessary to provide the Services;</p> <p>"Company Network" means the telecommunications system used by the Company in relation to the provision of the Services;</p> <p>"Contract" means the contract for the Services comprising these Terms, the Service Agreement (to which these Terms are attached or which otherwise refer to these Terms), any Special Terms and the Service Tariff relating to the Services;</p> <p>"Contract Start Date" means in relation to any Telephone Services, Support, Shine Cloud Connectivity Connections and Broadband Services the date that the relevant services are first provided to the Customer;</p> <p>"Contract Term" means in relation to each relevant Service the period from the relevant Contract Start Date until the termination of the relevant Service in accordance with the terms of this Contract subject to the relevant Minimum Contract Term for each Service</p> <p>"Customer" means the person, firm or company whose details are specified as the customer in the Service Agreement, or the person, firm or company whom is using the services;</p> <p>"Customer Site" means the address stated in the Service Agreement as the site at which the Equipment is or will be located (or such other address as may be agreed in writing by the Company from time to time) or any location where supplied Equipment is situated or installed;</p> <p>"Disconnection Fee" means in relation to Broadband Service and Shine Cloud Connectivity Connections the disconnection fee as specified in the Service Agreement or as otherwise specified by the Company from time to time;</p> <p>"Early Termination Charges" means the charge payable by the Customer to the Company as specified in clause 15.4</p> <p>"Equipment" means the equipment set out or referred to in the Service Agreement and such other equipment used for the purposes of accessing the Service as may be agreed in writing by the Company from time to time;</p> <p>"Excluded Equipment" has the meaning given in clause 10.16;</p> <p>"Fault Report" has the meaning given in clause 10.10;</p> <p>"Fixed Line Service" means the supply by the Company of such of the Company's Equipment and related services to enable the Customer to make or receive a telephone call using one or more of an access code, calling line identity, Shine Cloud Connectivity Connections, ShineCloud Seats/Extensions, dedicated leased line and a third party's exchange lines to route selected telephone calls over and via the Company's Network;</p> <p>"Free-phone Service" means the supply by the Company of such of services to enable the Customer to receive a telephone call from a third party at no expense to such third party; and Free-Phone Number shall be construed accordingly;</p>	<p>"Geo NTS" means a geographic number translation service which allows a dialled geographic telephone number to be transferred or routed to another telephone number and Geo NTS Number shall be construed accordingly;</p> <p>"Minimum Contract Term" means the minimum contract term for the relevant Service specified in the Service Agreement, commencing on the Contract Start Date, subject to the minimum periods specified in clause 3.2;</p> <p>"Monthly Service Charge" means the <u>minimum</u> amount of monthly spend the Customer has committed to spend as detailed on the Service Agreement;</p> <p>"Non-Geographical Number Service" means the supply by the Company of such services to enable the Customer to receive a telephone call from a third party at national call rates to the third party and Non-Geographical and Non-Geographical Number shall be construed accordingly.</p> <p>"Normal Business Hours" means 08h30 to 17h30 Monday to Friday (excluding bank or public holidays)</p> <p>"Parties" means the Customer and the Company together and Party shall be construed accordingly;</p> <p>"RPI" means the Retail Price Index (All Items Index) maintained and published by the Office for National Statistics from time to time (or any other official index published in substitution thereof from time to time);</p> <p>"Services" means any one or more of the Fixed Line Service, the Free-phone Service, the Non-Geographical Number Service, the Broadband Service and the Support Service as specified in the Service Agreement;</p> <p>"Service Agreement" means the order form accompanying or referring to these Terms which specifies amongst other things, the Customer's details, the Services, the Minimum Contract Term, the Service Tariff and any Monthly Service Charge;</p> <p>"Service Specific Terms" means in relation to Fixed Line Service the provisions of clause 7, in relation to Free-phone Service the provisions of clause 8, in relation to Non-Geographic Number Service the provisions of clause 8 and in relation to Broadband Service the provisions of clause 9;</p> <p>"Special Terms" means any special terms agreed in writing between the Company and the Customer;</p> <p>"Service Tariff" means the tariff detailing the individual telephone call charges (exclusive of VAT) and monthly line rental (if any) payable by the Customer to the Company set out or referred to in the Service Agreement or as notified by the Company to the Customer from time to time;</p> <p>"Support Service" means the Support Service referred to in clause 10;</p> <p>"Support Charge" means the charges for the Support Service specified in the Service Agreement subject to adjustment in accordance with clause 11.13 and 11.14 of this agreement;</p> <p>"Terms" means the terms and conditions for the Services set out in this document and (unless the context otherwise requires) ;</p> <p>"Termination Date" means the date that the Contract is terminated in accordance with these Terms in relation to all or part only of the Services (as the case may be);</p> <p>"Trial Period" means a period of 90 days from and including the Contract Start Date (or such other period agreed between the Company and the Customer and specified in the Service Agreement);</p> <p>"we" and "us" means the Company;</p> <p>"you" means the Customer.</p>
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1.2 Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

- 1.3 Any reference to a clause is to the relevant clause of these Terms.
 1.4 Headings and sub-headings are included for convenience only and shall not affect the construction or interpretation of the Terms.

2. **Contract**

- 2.1 These Terms together with the Service Agreement, any Special Terms and the applicable Service Tariff that govern the supply of Services by the Company to the Customer to the exclusion of all other terms including any terms of purchase or similar terms that may be proposed at any time by the Customer (unless expressly agreed by the Company in writing).
- 2.2 The Customer (following receipt by it of the Service Agreement from the Company, whether signed or not by the Company), shall be deemed to have made an offer to purchase the Services in accordance with Service Agreement, these Terms, any Special Terms and the applicable Service Tariff (**Customer's Offer**) on the earliest of the following dates:
- 2.2.1 the date that the Customer returns the Service Agreement signed on behalf of the Customer;
- 2.2.2 the date that the Customer (having received the Service Agreement from the Company), confirms in writing (including by email) to the Company that it wishes the Company to supply the Services; or
- 2.2.3 the date that the Customer makes its first payment to the Company in relation to the Services.
- 2.3 Following an offer made by the Customer in accordance with clause 2.2 the Company may accept or decline such offer. Unless the offer is declined, the Company shall be deemed to have accepted such offer (and the Contract shall be deemed to have come into binding effect) on the earliest of the following dates
- 2.3.1 the date that the Company confirms in writing (including by email) to the Customer acceptance of the Customer's Offer; or
- 2.3.2 the date that the Company commences providing any of the Services specified in the Service Agreement.
- 2.4 Each order for Services shall be deemed to be a separate contract (whether or not included on the same Service Agreement) such that any delay or failure by the Company to supply a Service shall not entitle the Customer (to the extent that any such entitlement exists) to terminate this Contract in so far as it relates to other Services or any other contract relating to such other Services.
- 2.5 These Terms supersede all prior agreements, arrangements, and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of the Contract. However, the obligations of the Parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated herein.
- 2.6 The Service Specific Terms are to govern the relevant Services only but are to be read in conjunction with those provisions relating to the Services generally.
- 2.7 In the event of any conflict between one or more provisions of the Service Agreement, the Special Terms (if any), the Service Tariff, the Service Specific Terms (in these Terms) and these Terms (other than the Services Specific Terms), such provisions will take precedence in the foregoing order stated to the extent required to resolve such conflict.
- 2.8 No order received by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

Commencement and Duration

- 2.9 The Contract Term in relation to a Service shall start on the relevant Contract Start Date and continue for not less than the Minimum Contract Term and thereafter in accordance with these Terms until terminated in accordance with clause 3.3 or clause 14 of these Terms.
- 2.10 The Company shall supply and the Customer shall accept the relevant Services for the Minimum Contract Term and in any event for in the case of Telephone Services or Broadband Services not less than a minimum period of 12 months from the Contract Start Date.
- 2.11 The Contract Term in relation to each relevant Service will automatically renew at the end of the Minimum Contract Term in relation to the relevant Service for a further period(s) of 12 months (and will continue to renew on each anniversary of the expiry of the Minimum Contract Term for a further period of 12 months at a time) unless and until the Customer serves on the Company not less than 60 (sixty) days prior written notice to terminate the relevant Service, with the termination date to be no earlier than the expiry date of the Minimum Contract Term or, as the case may be, the forthcoming anniversary of the expiry date of the Minimum Contract Term.
- 2.12 Any additional Services that are ordered by the Customer during any existing Contract Term of any other Service shall be provided for an initial minimum period of 12 months or such other period as specified in the Service Agreement for those additional Services notwithstanding the length of the unexpired period of the Contract Term of any other Service provided that the Company may at its sole discretion terminate any such additional Service to coincide with the termination of the Contract Term of any other Service.
- 2.13 **Trial Period:** For the avoidance of doubt at the end of the Trial Period unless the Customer gives prior written notice to terminate relevant Service (being subject to the Trial Period) in accordance with these Terms, the Customer shall be bound to the Contract Term in relation to such Service for the remainder of the Minimum Contract Term relating to the relevant Service.
- 2.14 In the event that any ordered Shine SIP service has an installation/activation postponed, delayed for any reason or suffer porting issues/delays, The Company will at its discretion transfer the customer's services in their current state on a like-for-like basis onto a standard call tariff with the date that its services transfer being deemed the Contract Start Date. The standard call tariff will be in force until such time as the new SIP service is provisioned whenever this maybe. The standard tariff will be 'Shine SIP Standard' for which base rates apply of 0.95 pence per minute to UK Local and National calls and 3.45 pence per minute to UK EE, O2, Vodafone and Three network mobiles. Monthly line rental charges will be applied at £9.99 per analogue line, £10.50 per ISDN2e channel and £12.50 per ISDN30 channel. The full tariff is available upon request.

Supply of Services

- 3.1 The Company shall provide the Services with due skill and care to the standards of a competent telecommunications provider in accordance with any telecommunication regulatory requirements subject to these Terms.
- 3.2 Subject always to clause 13 the Company shall use reasonable endeavors to provide the Services to the Customer by the date notified to the Customer for the commencement thereof but such dates are estimated and cannot be guaranteed by the Company.
- 3.3 While the Company will use reasonable endeavors to make available the Telephone Services and the Broadband Service 24 hours a day 365 day a year, the Company cannot guarantee and does not warrant that the Services will be free of interruptions or will be fault-free or that there will be no degradations of the quality of the Services from time to time due to reasons beyond the Company's reasonable control. The Company shall not be liable for any loss or damages should the Services be interrupted from time to time.
- 3.4 The Company shall not be liable for any faults or defects in the Equipment except to the extent that the Company is providing Support Service.
- 3.5 The Company may change the technical specifications of the Services from time to time provided that such changes do not materially adversely affect the performance of the Services.
- 3.6 The Company shall be entitled to use BT or any other carrier or provider for the provision of the Telephone Services and the Broadband Service from time to time and shall be entitled to switch between such providers as the Company sees fit in its absolute discretion.
- 3.7 **Help-desk support:** The Company will provide help-desk support in relation to Wholesale BT Network lines and Broadband Services during Normal Business Hours up to a maximum of 15 minutes per day. Unused help-desk support on any day may not be carried forward to another day. Help-desk support is limited to telephonic support and remote support where operationally possible. Help-desk support does not include any onsite support. While the Company will use reasonable endeavors to provide the help-desk support to a reasonably competent level, the Company does not guarantee any response times in relation to its help-desk support. The Company reserves the right to charge for help-desk support in excess of the free 15-minute daily allowance at its standard rates for help-desk support.
- 3.8 **Enhanced Services:** The Company, in its sole discretion, may provide certain supplemental services to enhance the performance or functionality of any Service (**Enhanced Service**). If the Company does provide any Enhanced Service in relation to any Service, the Company shall be entitled to charge the Customer its standard rates, from time to time, for such Enhanced Service provided that the Customer shall be entitled to terminate the Enhanced Service at any time by written notice to the Company during the first 90 days period of such Enhanced Service having been provided by the Company. In the case of such termination the Company shall refund the Customer any charges it may have paid in relation to

the Enhanced Service and the Company may terminate the provision of the Enhanced Service. If the Customer has not terminated the provision of the Enhanced Service within the said 90 day period, such Enhanced Service shall thereafter form part of the relevant Service for all purposes under this agreement.

- 3.9 In the event where cordless or DECT phones are ordered, unless otherwise specified, ShineCloud Seats/extensions are not provided with each cordless phone. Please refer to the Seats/Extension Numbers field on the Service Agreement for the number of Seats/Extension numbers you will be allocated. Where there are more cordless/DECT phones than there are Seats/Extension numbers then multiple cordless/DECT phones will share the same Seat/Extension number.

Customer Obligations

4. The Customer shall accept, and pay for, the Services in accordance with these Terms.
- 4.1 The Customer warrants that its details set out in the Services Agreement Order Form are true and correct and the Customer undertakes to notify the Company in writing immediately following any change in such details.
- 4.2 The Customer warrants that (if applicable) the Customer's existing telecommunications equipment (if any) is in proper working order and complies with all applicable standards and approvals so as to enable the Company to supply and continue to supply the Services.
- 4.3 The Customer shall provide all reasonable assistance to the Company (including access to all locations at which the Equipment and, if applicable, the Company's Equipment is situated or is to be situated) so as to enable the Company to supply and continue to supply the Services.
- 4.4 The Customer shall not sell or transfer or attempt to sell or transfer any telephone number provided to the Customer.
- 4.5 The Customer shall not use the Services for any improper or unlawful purpose, (including without limitation offensive, indecent, menacing, nuisance or hoax telephone calls) nor allow others to do so and the Customer shall indemnify without limit in respect of any and all claims made against the Company arising out of or related to such use.

Company Equipment

- 5.1 The Company shall be entitled to (but not obliged to) place such of the Company's Equipment in the Customer's premises (or in such other location as may be nominated by the Customer) as may be necessary in order to provide the Fixed Line Service. Additional charges may apply for the provision of the Company's Equipment.
- 5.2 The Customer shall provide a suitable place and appropriate conditions for the Company's Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense where the Company's Equipment requires such services) at the Customer's premises or in such other location as may be reasonably nominated by the Customer so as to enable the Company to supply and continue to supply the Fixed Line Service (without cost to the Company) and shall prepare such premises or location at its own expense in accordance with the Company's reasonable instructions.
- 5.3 Equipment provided by the Company, unless purchased outright at the start of the Contract, will remain property of the Company until the Customer terminates the Contract, requests a title of good certificate and this is provided by the company to the Customer.

Fixed Line Service

6. This clause 7 applies only to the Fixed Line Service.
- 6.1 In the event that the Customer's existing telecommunications equipment has least cost routing software, the Company may reprogram such existing telecommunications equipment in order to facilitate connection to the Company Network and the Customer will be responsible for any third-party charges in this regard.
- 6.2 Shine Cloud Call Record is a service that will securely store the Customers unencrypted phone calls for a period of 30 days. The customer may access and download these recordings. After 30 days, the calls from that day will be deleted and cannot be recovered.
- 6.3.1 By accepting this Agreement the Customer is acknowledging the possible limitations inherent in the use of VoIP and SIP. Such as, but not restricted to, the call quality will be dependent on the quality, speed, contention and usage on the Broadband connection. The Service may not always be available as a result of issues Shine has no control over such as power disruption, loss of broadband connection, failure of an internet service provider, failure of hosting provider or general internet peering. Connectivity to public emergency services may not always be available owing to the above or incorrect use of the Services by the Customer. Customers should always have alternative means of contacting emergency services.
- 6.3.2 It is assumed where ShineCloud or any of the Company's products or services is using an existing Customer provided connectivity that it is suitable for the required use. Further details on requirements can be provided upon request.
- 6.3.3 Please note. Where a ShineCloud Mobile service is provided, there must be a live ShineCloud Seat / Extension Number for the Application/Service to pair with and use. A suitable mobile device must also be available for the Application/Service to be installed and run on. Operation and functionality of this service cannot be guaranteed by the Company. Please refer to 13.10 of these terms for more information on this.

Non-Geographical Numbers Service and Free-Phone Service

- 7.1 This clause 8 applies only to the Free-phone Service, the Non-Geographical Number Service and Geo NTS.
- 7.2 The Customer acknowledges that ownership of Free-phone Number(s), Non-Geographical Number(s) or Geo NTS Number(s) allocated to it by the Company shall vest at all times in the Company and shall not pass to the Customer and the Customer shall have no right to use such Free-phone Number(s), Non-Geographical Number(s) or Geo NTS Number(s) upon termination of the Free-phone Service, Non-Geographical Number Service or Geo NTS (as the case may be). The Customer furthermore acknowledges that the Company cannot give any assurance or undertaking that any such numbers can be ported or transferred to the Customer or any third party upon termination of the aforementioned Services.
- 7.3 The Company reserves the right upon giving the Customer not less than one month's written notice to alter (without incurring any liability) the Free-phone Number(s), Non-Geographical Number(s) or Geo NTS Number(s) allocated to the Customer by the Company;
- 7.4 The Customer shall promptly inform the Company in writing of any event which is likely to substantially affect the number of calls to the Free-phone Number(s) allocated to it by the Company so as to enable the Company to devote appropriate telecommunications capacity to such Free-phone Number(s).

Broadband Services

- 8.1 This clause 9 applies only to Broadband Service.
- 8.2 The Company can only provide the Broadband Service on a working analogue line. It is the Customer's responsibility to ensure that an operational analogue line is available and the Customer is liable for any costs payable for line rental.
- 8.3 The Broadband Service does not include any management, support or support of the Customer's hardware, equipment or facilities, all of which remain the sole responsibility of the Customer.
- 8.4 The Company is responsible for providing the Broadband Service up to the telephone network termination point (NTP) of the Customer's hardware.
- 8.5 The Customer acknowledges that:
- 8.5.1 the provision of the Broadband Service is dependent:
- 8.5.1.1 on the provision of certain services by BT and other third parties beyond the control of the Company;
- 8.5.1.2 on the Customer being located in an area enabled for broadband (and any order by the Customer for a Broadband Service is subject thereto);
- 8.5.1.3 on the Customer's hardware, equipment or facilities (such as NTPs) being suitable for, compatible with and configured for the Broadband Service;
- 8.5.2 the Broadband Service may be subject to interruptions or outages due to faults on the network line or for the purposes of Support, upgrade or other operational reasons; and
- 8.5.3 there may be technical limits that prevent or restrict an operational Broadband Service being supplied to the Customer.
- 8.6 The Company will use reasonable endeavours to provide the Broadband Service at the download and upload speeds specified in the Service Agreement but such speeds may be affected adversely due to

- congestion on the network and other technical factors and matters beyond the reasonable control of the Company.
- 8.7. Any IP addresses procured or supplied by the Company in connection with the provision of the Broadband Service shall remain the property of the Company at all times and the Customer shall have no rights to such IP addresses upon the termination of the Broadband Service.
- 8.8. Where a usage allowance for the Broadband Service is specified in the Service Agreement, the Company shall have no obligation to provide any usage above such usage allowance and any usage permitted by the Company in excess of such usage allowance shall be at the sole discretion of the Company and charged without prior notice at the of £3.00 per Gigabyte (or part thereof) over the usage allowance specified.
- 8.9. The Customer shall comply with the Acceptable Use Policy in relation to the Broadband Service. The Company reserves the right to amend or update the Acceptable Use Policy from time to time. In the event of any conflict between the Acceptable Use Policy and these Terms, the latter shall take precedence.
- 8.10. If any software is provided by the Company to the Customer for use in connection with the provision of the Broadband Service the Customer shall comply with any licence terms applicable to that software and shall only use the software for the purposes of the Broadband Service and shall not modify, copy, resell, transfer, assign or licence such software. The Customer's right to use any such software shall terminate on the Termination Date of the Broadband Service.
- 8.11. If the Customer terminates or gives notice to terminate the Broadband Service, the Company may charge the Customer the Disconnection Fee (which may be added to the next invoice for Calls issued by the Company to the Customer).
- 8.12. In the event that Broadband has been ordered for a ShineCloud service to run on. And the Broadband has been ordered to go onto an existing telephone line. The telephone number for that line will be requested from the Customer by the Company. If 7 working days pass without the Company being provided with this information, the Company reserves the right to order a new line installation for the Broadband to run on. The line installation would be charged at a one-off £105 and the monthly line rental will be charged at £9.99 per month.
- 9. Support Service**
- 9.1. The following provisions of this clause 10 apply to Support Service to the extent applicable.
- 9.2. If the Company is to provide Support Service under the Contract, the Company shall maintain and support the specified Equipment located at the Customer Site in working order and to carry out without charge all repairs and replacements to the Equipment necessitated by fair wear and tear and/or, where supplied by the Company or its agents, faulty workmanship and/or faulty materials, provided that:
- 9.2.1. the Customer has complied and continues to comply with the provisions of this clause 10; and
- 9.2.2. the Customer is not in arrears with the payment of any Support Charge, Additional Charge or other amount payable to the Company under or in connection with this Contract.
- 9.3. Where the Company is fulfilling a valid replacement of Equipment under the Support Service, the replacement Equipment will be of the same, Equivalent or superior specification to the existing Equipment in the professional opinion of the Company.
- 9.4. Without prejudice to the Company's rights under this Contract or the Customer's continued liability for payment of the Support Charge or any other charges under or in connection with the Contract, the Company shall not be obliged to provide the Support Service for so long as any Support Charge or Additional Charge is overdue or disputed by the Client.
- 9.5. **Additional Services:** The Support Service does not cover repairs or replacements which in the reasonable opinion of the Company arise from or relate to any of the following (all of which repairs or replacements, as the case may be, would constitute an Additional Service for which an Additional Charge would be payable by the Customer subject to clause 10.7):
- 9.5.1. damage to, failure of or fault in the Equipment resulting from accident, neglect or misuse (including, but not limited to, failure to observe any instructions supplied by the manufacturer or supplier of the Equipment or the Company regarding the care for and operation of the Equipment), theft, vandalism, fire, lightning, water damage, adverse weather conditions, surges, fluctuations or interruptions in electrical power supply, environmental conditions, telephone line conditions, failures by third party telecommunication providers or carriers or the connection to the Equipment of unapproved accessories, attachments or other devices;
- 9.5.2. a breach by the Customer of any of the terms of this Contract;
- 9.5.3. the alteration, modification or Support or other tampering with the Equipment (including any labelling on the Equipment) by any person other than the Company without the Company's prior written consent;
- 9.5.4. the transportation or relocation of the Equipment (save where the same has been performed by or at the request of the Company);
- 9.5.5. any extension wiring, any Equipment not at the Customer Site, or of anything other than the Equipment;
- 9.5.6. any defect or error in any software used upon or in association with the Equipment;
- 9.5.7. the reprogramming of the Equipment to provide improved or modified service or facilities (other than 15 minutes of remote programming provided each day by the Company without charge to the Customer);
- 9.5.8. any reconnection of the Equipment following the Customer changing third party telecommunication providers or carriers;
- 9.5.9. any telephone area code changes or changes made by BT or any third-party telecommunication providers or carriers;
- 9.5.10. any default or failure by BT or other third-party telecommunication providers or carriers;
- 9.5.11. any defect in any equipment supplied or operated by BT or other third-party telecommunication providers or carriers;
- 9.5.12. any defect or fault existing in the Equipment immediately prior to the Contract Start Date;
- 9.5.13. any Excluded Equipment from time to time.
- 9.6. For the avoidance of doubt, the Support Service covers only the Equipment and it does not cover ancillary items including mobile, portable, software and third party equipment/software, answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterrupted power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless specified or otherwise agreed in writing. The Support Service does not include the supply of replacement cassettes, aerials, aerial systems and batteries.
- 9.7. The Support Service does not include the undertaking of any inspection required under the Electricity at Work Regulations 1999 or any other laws or regulations from time to time.
- 9.8. **Additional Charge:** The Company may (but is not obliged to) undertake at the request of the Customer any repairs or replacement in respect of the Equipment arising from or relating to any of the matters specified as Additional Services in clause 10.4 above and shall be entitled to charge for such Additional Services at the Company's usual labour rates and to charge for all replacements equipment, parts, spares and other materials (Additional Charge). The Company (or, in the case of supplying replacement equipment, one of its Associated Companies) would provide a quotation for the Additional Services setting out the Additional Charge and following acceptance by the Customer of such quotation the Company shall provide the Additional Services subject to these Terms.
- 9.9. The Customer will pay the Company's charges for any reprogramming and/or service visits as a result of a programming error carried out by or permitted by the Customer or any one acting on its behalf.
- 9.10. The Customer will pay the Company's charges for any reconnection of the Equipment following the Customer changing third party telecommunication providers or carriers in circumstances where the Company is not providing the relevant Telephone Services.
- 9.11. **Fault Report:** The Customer must notify the Company of any fault in the Equipment or any matter affecting the normal operation of the Equipment which the Customer reasonably believes is a fault (**Fault**) as soon as reasonably possible after the Fault has come to the attention on the Customer (**Fault Report**). The Fault Report by the Customer must be made by telephone to 08002545544 or such other telephone number designated by the Company from time to time for this purpose (**Telephone Notification**) or by email to support@shinenetworks.net or such other email address designated by the Company from time to time for this purpose (**Email Notification**). In the case of a Telephone Notification, the Customer must follow up as soon as reasonably possible thereafter by an Email Notification.
- 9.12. **Call Out:** If the Company (or any of its sub-contractor or agent) attends the Customer's Site in response to a Fault Report, the Customer shall be liable for a Call Out Charge if the primary cause of the Fault is any matter specified in clause 10.4 above. For the avoidance of doubt, if the primary cause of the Fault is any matter referred to in clause 10.2 above, the Call Out will be covered by the Support Charge, with the exception of Shine Cloud services unless specified to the contrary in the Service Agreement, in such a case the Call Out Charge will always be applicable to the Customer. If the Customer reports a fault in the Services and the Company determines that there is not a Fault or that
- the Company, acting reasonably, identifies that the Customer has caused the Fault, mislead or provided inaccurate information, the Customer shall be liable for a Call Out Charge.
- Access: The Customer shall allow the Company (or its sub-contractors or agent) access to the Customer Site at all reasonable times during Normal Business Hours (or in the case of emergency by appointment outside Normal Business Hours) and shall provide without charge all facilities as the Company (or its sub-contractors or agent) may reasonably require in order to carry out the Support Service (including investigation and testing in relation to any Fault).
- Relocating Equipment: If the Customer wishes to relocate the Equipment from the then current Customer Site to a new Customer Site, it shall give not less than 30 days written notice of the proposed relocation including reasonable details thereof. The Customer shall be liable for the Company's charges incurred in any reconnection or reconfiguration of the Equipment at the new Customer Site.
- Third Party Work: The Customer undertakes that while the Company is contracted to provide Support Service under this Contract, the Customer shall not maintain, service, repair, adjust or tamper with the Equipment or extension wiring nor to allow any other person to do any such thing (Third Party Work) without the Company's prior consent, which consent shall be subject to clause 10.15 below.
- If the Customer requires any Third-Party Work to be undertaken it must give the Company 30 days written notice naming the third party it wishes to carry out the Third-Party Work. The Customer must allow the Company the right of inspection of that Third-Party Work which should be carried out in accordance with all regulatory requirements (including those specified from time to time by OFCOM) and any current code of practice or industry standards. Should the Third-Party Work be found to be unsatisfactory in the Company's reasonable opinion the Customer must remedy the defects within 7 days of inspection or pay the Company's charges for carrying out any remedial works required by the Company. If the Customer does not comply with this clause 10.15 the Company may withhold any Support Service until such remedial works have been carried out to the Company's reasonable satisfaction but the Customer will continue to remain liable for the Support Charge.
- End of life: Where the Company, in its absolute discretion, is of the opinion that any of the Equipment has reached the end of its serviceable life or that any Equipment is beyond economic repair, it may exclude such Equipment (Excluded Equipment) from the scope of the Support Service by written notice to the Customer and allow a pro rata reduction in the Support Charges to reflect that such Excluded Equipment is no longer within the scope of the Support Services.
- Any period of Support Services which is offered free or at a discounted rate by the Company is strictly conditional on the Customer returning the relevant Service Agreement duly and properly signed on behalf of the Customer within such period as the Company may notify to the Customer (but in any event within 7 days of the specified Contract Start Date) and the Customer must keep proof of sending and of the Company's acknowledgment of receipt (and produce a copy thereof to the Company on demand). If the signed Service Agreement is not returned to the Company within the period notified to the Customer, the Company reserves the right to charge for any Support Service or other work undertaken by it at its usual hourly rates.
- The Customer shall be responsible for ensuring that any of its existing equipment as at the Contract Start Date (other than equipment supplied by an Associated Company of the Company) which is to be covered by the Support Service is in good working order as at the Contract Start Date. The Company reserves the right to withhold Support Service in respect of such equipment until it has carried out an inspection of such equipment, and if required by the Company (in its sole discretion) the Customer will be required to repair or replace the equipment concerned as an Additional Service (in which case clause 10.7 shall apply) or the Company may designate such equipment as Excluded Equipment.
- The Support levels are broken down as follows:
- ShineCloud onsite - Shine Support is provided Monday to Friday, 9am to 5pm excluding public holidays with a guaranteed 4 working hour response time for all faults. Handset Warranty provides a next working day advanced replacement when logged by 1pm the previous working day. Only faults relating to fair wear and tear are included.
- ShineCloud telephone help-desk and remote support - Shine Support is provided Monday to Friday, 9am to 5pm excluding public holidays with a guaranteed 4 working hour response time for all faults. Handset Warranty provides a next working day advanced replacement when logged by 1pm the previous working day. Only faults relating to fair wear and tear are included.
- Router Warranty is an advance replacement Router service of the same or equivalent router, pre-configured with the basic Broadband details. Routers will be sent out for next working day delivery if it is agreed a replacement router is required by 1pm. Shine cannot be held responsible for the delivery service. The existing router onsite must be returned to Shine at the Customer's expense. If there are repeated faulty router replacements required within a short period, Shine reserves the right to send out an engineer to investigate the reasons behind this. If this occurs the Call Out charge will be at the Customer's expense.
- Where Remote Support is provided or ordered, it is reliant on there being a connected, available and suitable data connection that Shine can use to access the Telephone System covered under Support or relevant Agreement. It is the Customer's responsibility to pay any costs associated with achieving this.
- 10. Charges and payment terms**
- 10.1. The Customer will incur charges from the time when the Services are used or Calls made or received except in the case of Services subject to a periodic rental, in which case the Customer will incur charges in advance of the date the Service is made available for use.
- 10.2. The Customer shall pay rental charges monthly in advance (or as otherwise agreed in writing between the Parties) and agrees that the Company's first invoice will include the rental charges due from the relevant Contract Start Date until the end of the second month of the relevant Contract Term.
- Connection Fee:** In the case of Broadband Service, the Customer shall pay the Connection Fee together with the first month's fee in advance of commencement of the Broadband Service.
- The Customer agrees to pay any increase in call charges, line rentals and other costs, charges or expenses which may be implemented from time to time and the Company shall endeavor to provide the Customer with prior notice of such increase where this has been made available to the Company.
- Unless otherwise agreed by the Company in writing, the Customer shall pay for Calls and other usage charges in accordance with the rates specified in the Service Tariff together with the Company's other standard charges (available on request, if not specified in these Terms or the Service Tariff). Calls made via other networks and not routed via the Company Network or the Company's preferred network will be charged at such third party's networks standard rates. The Customer is fully liable for all charges for all Calls made using any of the Services (whether or not the Services are used with the Customer's knowledge and consent).
- Call and other usage charges will be invoiced in arrears and the Company shall be entitled to calculate these charges for Calls using the details recorded by the Company Network.
- Save as otherwise provided in these Terms, all charges payable under or in relation to the Contract shall be payable in cleared funds (free of any deductions or set off) by either direct debit or by cheque within 10 days of the date of the Company's invoice (which shall be deemed to be accepted by the Customer unless the Customer indicates that the invoice is disputed (and provides evidence to support this) within 10 days of the date of the Company's invoice).
- Trial Period:** Where the Customer has agreed to subscribe for a Trial Period and has properly terminated this Contract on or before the end of such Trial Period, the Customer shall make payment in accordance with this clause 11 for the duration of the Trial Period or, if later, until such time as the Customer stops making any use of the Services even if this occurs after the Trial Period.
- Monthly Service Charge:** If the Customer has agreed a Monthly Service Charge but the Customer fails to reach on average the agreed Monthly Service Charge commitment in respect of any Telephone Service over any period during the Contractual Term to which the Monthly Service Charge figure relates for the Service concerned, then the Customer agrees to pay as an additional charge an amount equal to the amount by which the actual Call charges incurred in such period is less than the aggregate Monthly Service Charge figure for the period concerned.
- The Customer acknowledges that it has committed to the Monthly Service Charge in order to receive more competitive rates for Calls as set out in the Service Agreement than would have been available to it has the Customer not committed to the Monthly Service Charge.
- Call Out Charge:** Unless covered by the scope of Support Service or otherwise agreed by the Company in writing, the Customer shall pay the Company's standard Call Out Charge or other repair charges specified as otherwise notified in writing to the Customer from time to time. The Customer shall be liable for any charges made to the Company by BT or other carrier or provider in relation to any of the foregoing.
- Support Charge:** The Customer will be invoiced every consecutive month (Starting from the Contract Start Date) the Support Charge, or the Monthly Service Charge relating to Support, monthly in advance. Monthly in advance is specified as the first day of the next succeeding month until the last day of the next succeeding month. The Support Charge is to be paid by direct debit unless otherwise agreed in writing by the Company.

10.13. **RPI increase to Support Charge:** Where the Company is providing a Support Service, the Support Charge shall be increased on each anniversary of the Contract Start Date of the Support Service (**Review Date**) by the percentage increase in the RPI over the twelve-month period ending on the last calendar day of the calendar month which is two calendar months prior to the month in which the Review Date falls (**RPI Period**) plus 3 percent. By way of illustration, if a Review Date falls on 15 April, the RPI period will be the twelve-month period ending on the preceding 31 January.

10.14. **Support Charge adjustments:** If additional or substitute equipment is added to the Equipment subject to the Support Service, the Company shall be entitled to increase the Support Charge to take into account such additional or substitute equipment. The Company shall give written notice of such increase to the Customer. An increase in the Support Charge under this clause will be a maximum of £4.50 per month per maintained telephone handsets and a maximum of 15% of the item value for other telephone phone system hardware.

10.15. **Administration Charge:** The Customer agrees that it shall be liable for the following administration charges which the Company may charge to the Customer in the circumstances referred to below:

	Administration Charge
If the Customer does not pay any amount due on the Contract when due and the Company has to request (in writing or telephonically) payment of the overdue amount:	£25 per instance
If any payment made by the Customer by cheque is dishonored or if any debit order is not met or is cancelled (without the consent of the Company) by the Customer:	£45 per instance
If a Contract for the supply of Telephone Services comes into effect in accordance with clause 2 of these Terms but due to a default on the part of the Customer the supply of the relevant Telephone Services does not commence within 30 days thereof:	£145 per 30-day period (or pro rata for part thereof) up to a maximum duration of 12 months
If the Company places a call bar on any telephone line forming part of the Telephone Services following a default by the Customer to pay any charges for or relating to Telephone Services:	£45 per bar per number
If the Customer wishes to transfer the Contract to another legal entity and requests the Company's consent to such transfer as required by these Terms (whether or not the Company gives such consent):	£250
If the Customer terminates the Contract for Telephone Services and requires the Company to reset any password in respect of the Equipment (or any part thereof) to a default setting:	£275 (remote re-setting) £550 (on site re-setting)
If the Company terminates the Contract for Telephone Services in accordance with clause 14.4 and the Customer requires the Company to reset any password in respect of the Equipment (or any part thereof) to a default setting:	No charge

10.16. **Security deposit:** If the Customer has been late paying any amount payable under the Contract on more than three occasions in any 6-month period, the Company shall be entitled to require that the Customer pay to it a security deposit equal to the average monthly Call charges incurred by the Customer over said 6-month period. The Company shall be entitled to hold such security deposit for the remaining duration of the Contract Term and in its absolute discretion apply that deposit in whole or in part towards any amounts that may be owed to it by the Customer under or in connection with the Contract (without prejudice to the Customer's liability to the Company).

10.17. **Interest:** if the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum over Lloyd's Bank PLC's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) together with the Company's costs of recovering any amount unpaid. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10.18. **No set-off:** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding the payment of any such amount in whole or in part.

10.19. **VAT:** All charges, fees and other amount payable under or in connection with the Contract are stated exclusive of VAT and the Customer shall be liable to pay VAT on all such charges, fees and other amounts at the prevailing rate of VAT from time to time.

11. Customer's Indemnity

The Customer shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with the Customer's breach of the Contract, and/or these Terms.

12. Exclusion and Limitation of Liability

12.1. All conditions, warranties, representations, statements, liabilities and other terms implied by common law, statute or otherwise are excluded to the fullest extent permitted by law.

12.2. Nothing in this clause 13 or any other provision in these Terms excludes or limits the liability of the Company:

12.2.1. for death or personal injury caused by the Company's negligence, or

12.2.2. liability for defective products under the Consumer Protection Act 1987, or

12.2.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

12.2.4. for fraud or fraudulent misrepresentation on the part of the Company.

12.3. Subject to clauses 13.4 and 13.5 below the Company's entire liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the sums received by the Company for the Services which are the subject of the claim over the 6 months prior to the date that such claim arose.

12.4. The Company shall not be liable to the Customer in contract, tort (including negligence) breach of statutory duty, misrepresentation, restitution or otherwise, arising under or in connection with the Contract or the performance or contemplated performance of the Services for:

12.4.1. loss of profit,

12.4.2. loss of business or business opportunity;

12.4.3. loss of contracts;

12.4.4. loss or harm to goodwill;

12.4.5. loss of anticipated savings;

12.4.6. loss of or corruption of data;

in each case whether direct, indirect or consequential and whether or not the Company knew or ought to have known that such losses, harm or damages might be incurred.

12.5. The Company shall not be liable to the Customer in contract, tort (including negligence) breach of statutory duty, misrepresentation, restitution or otherwise, arising under or in connection with the Contract or performance or contemplated performance of the Services for any indirect, consequential

or special losses howsoever arising and whether or not the Company knew or ought to have known that such losses or damages may be incurred.

12.6. Without limiting the foregoing, the Company shall not be liable to the Customer or be deemed to be in breach of the Contract in respect of telephone calls made or arising out of the use by the Company or a third party of equipment not supplied by the Company in conjunction with the Equipment or the Company Network (whether or not with the Customer's knowledge or consent).

12.7. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Services, if the delay or failure is beyond the Company's reasonable control. Without limiting the foregoing, the following shall be treated as causes beyond the Company's reasonable control:

12.7.1. default or failure of a third party (including any public telecommunications network operator or maintainer);

12.7.2. failure in the supply of any third Parties' telecommunications system;

12.7.3. failure, shortage or disruption of power or utility supplies;

12.7.4. any fraudulent, unlawful or unauthorized use or misuse (including hacking) of the Equipment or Company Network by a third party;

12.7.5. Act of God, explosion, flood, storm, volcanic activity, fire or accident;

12.7.6. war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition;

12.7.7. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.

12.8. **Fraud and Security:** While the Company will use reasonable endeavors to prevent unauthorised, unlawful or fraudulent access to or use of the Company Network and the Services (**Unauthorised Use**) by a third party (which includes any employee officer or agent of the Customer), the Customer acknowledges that the Company cannot guarantee the prevention or detection of Unauthorised Use. The Company cannot be held liable for the costs of any calls or other charges arising from or connected with such Unauthorised Use and the Customer shall be liable to the Company for all such costs or other charges.

12.9. **Time limitation on legal proceedings:** Any cause of action which the Customer may have against the Company under or in connection with the performance or contemplated performance of this Contract shall be deemed to be irrevocably waived unless the Customer has served legal proceedings on the Company within 2 years after the date such cause of action arose and the Customer shall be permanently barred from serving any such proceedings after the expiry of such 2 year time period.

12.10. The Company shall not be liable or responsible to the Customer or be deemed to be in breach of the Contract due to software installed or portals used as part of the Company's Services. Where software provided by the Company is installed the Customer accepts this is at their own risk. Performance of software, applications and portals cannot be guaranteed. Any damage or side effects as a consequence of using those elements is at the Customer's risk, the Company has no liability. Furthermore, it is the Customer's responsibility to maintain and operate the hardware for these services in a suitable fashion.

13. Suspension and Termination

13.1. **Suspension of Services:** The Company may suspend or terminate any or all of the Services immediately (including the barring of outgoing and/or incoming Calls other than 999 and emergency calls), without prior notice to the Customer, or at any time if:

13.1.1. the Company has reasonable grounds for believing that the Equipment is used or may be used in an unauthorised or illegal manner;

13.1.2. the Customer is in breach of any of the terms of the Contract and has failed to rectify it within any time period set by the Company;

13.1.3. the Customer notifies the Company that any Equipment is lost or stolen;

13.1.4. the Company's Network fails or is being tested, modified or maintained;

13.1.5. the Customer fails to pay to the Company any amount due under this Contract when it becomes due;

13.1.6. the Customer fails to pay to an Associate Company of the Company any amount due under any contract with that Associate Company; or

13.1.7. the Customer incurs unbilled telephone call charges in excess of those anticipated by the Company or as otherwise agreed with the Customer.

13.1.8. any of the events or matters referred to in any of clauses 14.3.2 to 14.3.5 occur or apply in relation to the Customer

13.2. **Resumption of Services:** In the event that the Company suspends or terminates but later agrees to resume any Service pursuant to clause 13.1:

13.2.1. the Company may, but is under no obligation to provide the applicable Service(s) again until the Customer takes such action that may in the Company's absolute discretion be required, including the payment of: any charges, costs or fees;

13.2.2. (without limiting the generality of the preceding clause), the Company may require the Customer to pay an amount (determined in the discretion of the Company) on account of future Call charges;

13.2.3. the Customer shall continue to be responsible for the Company's charges under or in connection with the Contract unless the Company ends the Contract by giving notice in accordance with clause 13.3 or 14.4 or the Customer ends the Contract by giving notice in accordance with clause 13.5;

13.2.4. the Company will be under no obligation to provide and does not guarantee that any Service, including the use of any telephone numbers will be available, or in the event that they can be made available, will be done so on terms identical to those existing prior to the suspension or termination; and

13.2.5. the Customer acknowledges that if any Service is reinstated following suspension, it may be subject to delays by, or the payment of charges to third Parties that are beyond the control of the Company.

13.3. **Termination for breach:** The Company may terminate immediately the Contract in respect of all or part only of the Services by giving notice to the Customer at any time if:

13.3.1. the Customer commits any breach of the Contract and, in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of written notice from the Company giving particulars of the breach and requiring it to be so remedied; or

13.3.2. the Customer makes any voluntary arrangement with its creditors (within the meaning of the insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or passes any resolution to enter into administration or liquidation; or

13.3.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

13.3.4. the Customer ceases, or threatens to cease, to carry on business or substantially changes the nature of its business; or

13.3.5. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer.

13.4. **Termination on notice:** The Company may terminate the Contract in respect of all or part only of the Services:

13.4.1. at any time on 30 days written notice to the Customer;

13.4.2. in the case of the Customer declining to accept a quotation for Additional Services, on 30 days written notice to the Customer.

13.5. **Termination by Customer:** Subject to clause 14.7, the Customer may terminate the Contract in respect of all or part only of the Services:

13.5.1. prior to the expiry of the applicable Minimum Contract Term upon giving written notice if the Company materially breaches the Contract (and such breach is not rectified within 60 days of the Customer's written notification to the Company of the breach) or if the Company fails to provide the applicable Service for 60 or more consecutive days; or

13.5.2. on giving 60 days prior written notice provided that such notice shall not terminate the Contract prior to the expiry of the applicable Minimum Contract Term or anniversary thereof.

13.6. **Termination at end of Trial Period:** Subject to clause 14.7 the Customer may terminate the Services being provided during any Trial Period upon giving not less than 7 days prior written notice before the end of the Trial Period.

13.7. **Deemed withdrawal of notice:** If the Customer has given notice under clause 14.5 or clause 14.6 but continues to use the relevant Services following the Termination Date, the Contract shall continue and the Customer's notices shall be deemed withdrawn (and in the case of the Customer having given notice under clause 14.5.2 the Contract shall be deemed to have renewed uninterrupted for a further 12-month period in accordance with clause 3.3).

14. **Consequences or Termination**

14.1. in the event that the Contract is terminated in accordance with clause 13:

- 14.1.1. the Customer will permit the removal of any of the Company's Equipment situated or installed at the Customer Site or such other location notified to the Company by the Customer;
- 14.1.2. the Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the equipment is or may be stored in order to inspect or retake possession upon which the Agreement shall be terminated. Such termination shall not prejudice the rights of the other Party arising prior thereto.
- 14.1.3. the Customer will be responsible for all outstanding charges and fees for the remainder of the period detailed in the Contract (if applicable) together with any Disconnection Fee notified to the Customer and the Customer shall have no right to withhold or set off any such amounts;
- 14.2. In the event of early termination or termination upon expiry of a Trial Period the Customer shall be liable for all charges and costs for the Service until the actual switching of services to a new provider notwithstanding that such switch over may occur after the expiry of the Trial Period.
- 14.3. In the event of early termination without cause by the Customer or in the event of termination of this agreement by the Company due to material breach by the Customer, the Customer shall pay all sums due and owing for the remainder of the Minimum Contract Term or any further term within 14 days of the date of termination.
- 14.4. If the Customer wishes to terminate a Telephone Service prior to the expiry of the Minimum Contract Term, the Company may permit such early termination provided the Customer pays an Early Termination Charge being the greater of:
- 14.4.1. the Monthly Service Charge figure multiplied by the remaining number of months of the Minimum Contract Term; or
- 14.4.2. the average of the three highest monthly bills actually incurred at any time during the 12-month period prior to the date (or proposed date) of early termination (or, as the case may be, such shorter period if the Contract has not run for 12 months) multiplied by the remaining number of months of the Minimum Contract Term.
- 14.5. Portability: The Company cannot guarantee that on termination of a Telephone Service the carrier or provider used by the Company in relation to the relevant Telephone Service will have in place arrangements to allow the Customer to port or transfer a particular telephone number to a new carrier or provider.
15. **General**
- 15.1. These Terms shall apply to the Contract to the exclusion of any other terms referred to by the Customer.
- 15.2. No Party shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement or warranty in the Contract.
- 15.3. No variation or amendment to the Contract or these Terms shall be binding unless agreed in writing by a director or authorised representative of the Company.
- 15.4. The Company may amend any provisions of these Terms if necessary to comply with (a) any changes in laws or regulations (b) the requirements, stipulations or conditions of OFCOM or any other regulatory body or authority or BT or other carrier or provider. The Company will give notice in writing to the Customer of any amendment to these Terms pursuant to this clause as soon as reasonably practicable.
- 15.5. The Contract is personal to the Customer and the Customer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without the Company's prior written consent. The Company may assign or transfer any of its rights or sub-contract any of its obligations under the Contract at any time.
- 15.6. A notice required or permitted to be given by the Company to the Customer under these Terms shall be in writing addressed to the address set out in the Company's last invoice to the Customer. A notice required or permitted to be given by the Company to the Customer under these Terms shall be in writing addressed to the address to which the Company's last invoice to the Customer was sent. All such notices shall be served in writing by registered or recorded delivery post or delivered by hand.
- 15.7. The Company may register information about the Customer with a licensed credit reference agency. This information may be used to make credit decisions by the Company and third Parties. The information may also be used to prevent fraud and to trace debtors.
- 15.8. The Company may monitor and record telephone calls between it and the Customer for training purposes and to combat fraud.
- 15.9. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.10. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 15.11. The Contract shall be governed by the laws of England and the Customer agrees to submit to the non-exclusive Jurisdiction of the English courts.
- 15.12. A person who is not a Party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

Shine Networks Ltd Terms and Conditions of Sale

1 Added Interpretation

- 1.1 In these Conditions:
- "Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
- "Goods" means the goods (including any instalment of the goods or any parts for them) specified in the order form to which these conditions are annexed.
- "Seller" means Shine Networks Ltd, registered in England & Wales under company number 955454 whose registered office is Langstone Technology Park, Langstone Road, Havant, Hampshire, PO9 1SA
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- "Contract" means the contract for the purchase and sale and installation of the Goods.
- "Installation Address" means the place of business of the Buyer at which the Goods are to be installed and specified in the order form to which these conditions are annexed.
- "Writing" includes Email, facsimile transmission and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the Sale

- 2.1. The Seller shall sell the Goods and the Buyer shall purchase the Goods in accordance with any written quotation or Service Agreement the Seller has accepted from the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Orders and Specifications

- 3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer).
- 3.3. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.4. No order received by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 Price of the goods

- 4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price will be at the Seller's standard price for the Goods available upon request. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in labour costs, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.4. THE Equipment shall remain the property of the Company until payment is made in full or all sums due under the Contracts between the Company and the Customer.
- 4.5. UNTIL title passes to the Customer under this clause 4.1 the following shall apply:
- 4.5.1 THE Customer shall hold the Equipment as bailee for the Company, store the same in such a way that it can be identified as the Company's property and keep it separate from the Customers own property and the property of any other person.
- 4.5.2 The Customer will not cause or permit or suffer any labels, badges, serial numbers or other means of identification of the equipment to be removed or obscured
- 4.5.3 If payment has become due, or the provisions of clause 6.3 shall apply, the Company shall be entitled to recover the Equipment from the Customer and for that purpose the Customer hereby grants to the Company, its agents and employees, an irrevocable licence to enter any premises where the Equipment is stored in order to repossess the same

5 Terms of payment

- 5.1. The Buyer shall pay the full price of the Goods within as per terms on the invoice for the Goods.
- 5.2. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.2.1. Cancel the contract or suspend any further deliveries to the Buyer;
- 5.2.2. Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.2.3. Charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery

- 6.1. Delivery of the Goods shall be made by the Seller to the Installation Address detailed on the order, unless specified differently by the Buyer in writing and accepted by the Seller.
- 6.2. Any dates quoted for delivery and installation of the Goods are approximate only and the Seller shall not be liable for any delay in delivery or installation of the Goods however caused. Time for delivery or installation shall not be of the essence of the Contract unless previously agreed by the Seller in writing.
- 6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4. The Buyer shall be solely responsible for and where applicable shall ensure that at the date of Delivery or Installation:
- 6.4.1. An adequate mains electricity supply with appropriate earth is provided at the Installation Address;
- 6.4.2. All equipment which causes or is likely to cause interference to the Goods or to the use and operation of the Goods is adequately suppressed, screened or otherwise maintained so as to prevent such interference.
- 6.4.3. Any Network equipment is suitable and fully operational.
- 6.4.4. Access is granted to the Sellers representative or Delivery Courier. Failed visits or deliveries will be at the expense of the Buyer.

- 6.4.5. Any stated Labour or Hourly charges are on a per engineer basis. Any additional required Engineers will incur additional costs to the Buyer at the Sellers standard rates.
- 6.4.6. Any additional site visits from the Seller or its representatives, will be charged to the Buyer at the Sellers standard rate. With a full day visit being defined as 8 hours onsite, during normal working hours and days and a half day visit being defined as a up to 4 hours onsite, during normal working hours and days.
- 6.4.7. The Customer shall inspect the Equipment as soon after delivery as is reasonably practicable and will notify the Company in writing of any shortage of supply deficiency or damage to the Equipment within seven days of delivery. If the Customer fails to comply with this clause the Company shall be under no legal obligation in respect of any alleged shortage discrepancy or damage.
- 7 Risk and property**
- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3. Title of the goods does not pass to the Buyer until such time full payment has been received by the Seller. If full payment for the goods is not received within the Sellers trading terms the Buyer hereby grants access to its premises and allows the Seller to remove, and repossess such goods. In such circumstances, the Buyer will be charged for all cabling/installation works and loss of profits.
- 8 Warranties and liability**
- 8.1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from Delivery.
- 8.2. The above warranty is given by the Seller subject to the following conditions:
- 8.2.1. The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.2.3. The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4. The above warranty does not extend to parts, materials, equipment, or software not provided by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.2.5. The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Buyer shall be in breach of any of the provisions of paragraph 6.4 above
- 8.2.6. Any valid Warranty claim by the Buyer and reported in the appropriate manner will be on a "Return to Base" basis. The Buyer will be responsible for returning the relevant Goods to the Seller at the Buyers expense. The Seller can be requested to attend the Installation Address and remove the relevant Goods at the request of the Buyer. In such an instance, the visit and time involved in carrying out the removal will be charged to the Buyer at the Sellers standard rates, advised at the time or available upon request.
- 8.3. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.6. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.7. ALL drawings, specifications and technical documents issued by the Company at any time in relation to the Contract are issued solely for the Customers use in connection with the Equipment and shall not be copied, reproduced or communicated to any third party without the Company's express written agreement.
- 8.8. EQUIPMENT must be operated in line with the manufacturers stated environmental parameters as to temperature, humidity and other conditions.
- 8.9. ALL representation as to the performance of the equipment are based on information supplied by the manufacturer of the equipment and relate to their performance in normal conditions and when used correctly.
- 9 Settlements**
- 9.1 Where a Settlement payment is contained within the Service Agreement to be paid by the Company to the Customer. This payment will not be made until the Customer has provided evidence of their existing Finance or Contract termination fee which is being settled.
- 9.2 Furthermore, the Settlement payment will not be paid until all of the Service Agreement Services have been installed and the Company are in receipt of all valid signed lease documents associated with the Service Agreement order and they have been accepted by the finance company.
- 9.3 Lease and Settlement services will be provided by a lease finance company. At present the Company uses BNP Paribas. But this is subject to change and is always at the discretion of the Company as to which Finance company to use and introduce to the Customer. Whichever finance company is used they are a separate company to the Company. The Company has no sway or influence over the lease finance Company. The finance company's decision on acceptance, paperwork and all elements in relation to Finance and Settlements is final.
- 9.4 Where a settlement or lease payment service is requested via the Company through the Service Agreement. A separate agreement will need to be signed and accepted with the finance company in question. The payments and sums involved in the lease or settlement will be discussed and broken down on the Service Agreement by the Company prior to the Customer being provided with the finance companies paperwork. The customer will however will be credit checked with the finance company prior to the Company accepting any Service agreement.
- 10 General**
- 10.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 10.4. Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of England and Wales and in accordance with the Arbitration Act 1996
- 10.5. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.