

# AdaptiveComms Terms and Conditions

Hosted Solutions



YOUR AGREEMENT WITH US (this "AGREEMENT") IS MADE UP OF THE FOLLOWING DOCUMENTS:

- (i) THESE CONDITIONS FOR HOSTED PHONE SERVICES;
- (ii) 21CNS TERMS AND CONDITIONS;
- (iii) THE RELEVANT TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU; AND
- (iv) ANY FURTHER CONDITIONS RELATING TO SPECIFIC SERVICES.

The terms of this agreement form part of the conditions of sale and shall be incorporated into the 21CNS Terms and Conditions signed by the customer. These terms are to be read in conjunction with the 21CNS Terms and Conditions. If your Hosted phone service solution includes our Ethernet or EFM product then the Twentyfirst Century Network Solutions Ltd - Connectivity Terms and Conditions – Version 2 shall also apply. No individual set of terms will individually constitute a full-service contract for this Service. In the event of any conflict or inconsistency between the terms within these conditions and the 21CNS Terms and Conditions, then the terms within these conditions will prevail.

## 1. THE SERVICE

1.1 We will supply you with the services in accordance with our conditions and the accompanying signed 21CNS Terms and Conditions and as set out in your final quote referenced on the 21CNS Terms and Conditions, the combination of which will form a service contract between the parties.

1.2 All details specified on the final quote, 21CNS Terms and Conditions and are based on information supplied by you and/or collected during a site survey (remote or onsite) and may be subject to amendment in accordance with Clauses 1.4 to 1.6 below.

1.3 We and/or our subcontractors may conduct surveys to clarify whether the Service, Equipment, Installation Fee or Service Fee require amending.

1.4 Where we determine that amendments are required, we will submit to you a replacement quote and 21CNS Terms and Conditions reflecting any such changes. If the replacement 21CNS Terms and Conditions is agreed by you in writing or by email, the replacement 21CNS

Terms and Conditions will immediately supersede the original 21CNS Terms and Conditions (which will be immediately cancelled). If you do not agree the replacement 21CNS Terms and Conditions, both the original 21CNS Terms and Conditions and replacement 21CNS Terms and Conditions will be cancelled by us 14 days after notification of such amendments.

1.5 Following the completion of the surveys and, if required, the agreeing of the replacement 21CNS Terms and Conditions, we will confirm to you when the Service will commence.

1.6 We will use reasonable endeavors to meet any agreed times or dates, but time is not of the essence in respect of those times or dates and you acknowledge that all timeframes are estimates only and that service levels are target service levels only.

1.7 Throughout the provisioning process, we will need to communicate with named member(s) of your staff to arrange access to your premises. Any delays to these requests by you will delay Service Commencement Date and we will not be liable for any such delay.

1.8 To enable us to provide the Installation Service, you will:

1.8.1 prepare the Sites and your networks in accordance with our instructions. You are responsible, at your own cost, for the power supply and arranging alternative power supplies if any temporary supply fails. Installing engineers may refuse to install equipment if they perceive a hazard or risk,

1.8.2 provide us with full access to your Sites and networks and make available such office and technology facilities as may be necessary for us to provide the Service,

1.8.3 provide a suitable operating environment for the equipment in accordance with the manufacturer's operating instructions,

1.8.4 promptly furnish us with such information and documents as we may reasonably require for the proper performance of the Services,

1.8.5 obtain all third-party consents, licenses and rights reasonably required in order to allow us or our subcontractor to provide the Service and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, in relation to the Services, and

1.8.6 put in place adequate security and virus checking procedures in relation to any computer facilities to which you provide us with access.

1.9 All Equipment provided by us for the use

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of this contract (equipment includes but is not limited to Handsets, Headsets, power units and Routers) will remain our property unless paid for in full at the outset of this agreement.

1.10 Where Equipment is provided as part of a monthly Service Fee or is not paid for in full (as described for in term 1.9) you will return all of the Equipment provided to you during this contract to 21CNS in good condition and full working order at your cost on termination of your contract for any reason.

1.11 If you do not return any equipment we have provided in the use of services under this agreement, as described in 1.10 you will be immediately liable to pay the recommended retail price of the equipment at the time of the termination of contract plus a £25 per unit administration fee.

1.12 You are required to protect your equipment with adequate business insurance for loss, theft or damage for any reason. You may either provide us with a copy of your business insurance or pay a small monthly asset insurance fee to us, this is individual to each purchase depending on the quantity and type of equipment provided but is a nominal amount cost available on request.

1.13 We reserve the right not to provide the Service to any Site and to withdraw our provisional acceptance of an order for reasons including, but not limited to:

1.13.1 the distance between a Site and our point of presence or its underlying service provider,

1.13.2 if a site survey finds that a site is not suitable for the provision of the Service,

1.13.3 if you do not agree to pay any excess construction charges or any other charges reasonably levied by us in addition to the charges initially proposed.

1.14 We or our nominated subcontractor will install the Service and will perform a series of commissioning tests to ensure that the configured Service is functioning correctly. On successful conclusion of the tests the Service will be deemed to be ready for use and we shall be entitled to invoice you for such Service from this date.

1.15 Provision of the Service may be subject to the completion of a satisfactory site survey(s) by us or our subcontractor. You acknowledge that it will be necessary for us or our subcontractor to visit the installation Site or Sites to conduct such survey(s) and for the

purposes of installation.

1.16 Where an appointment is made for us or our subcontractor to visit your Site, including for the purposes of a site survey or for installation and the visit cannot be successfully completed due to:

a) the inability of us or our subcontractor, through no fault of our / their own, to complete the work,

b) the inability of us or our subcontractor to gain access to the site or sites or any part thereof which is necessary for the work,

c) the appointment is broken by you,

d) your failure to prepare the site in accordance with 1.8 or any other preparatory instructions we may have given you, or

e) any other reason where we or our subcontractor are not at fault,

we will charge you with our standard aborted visit charge which may be applicable at the time. Rescheduled appointments following an aborted visit will be subject to new lead-times and will be confirmed to you at the time.

1.17 Unless otherwise agreed in writing between the parties you must agree an appointment for installation at a Site within 14 days of notification by us of our preferred installation date. In the event that you do not agree such an appointment, the appointment will be deemed to have been fixed for our preferred installation date unless a revised Required Date is subsequently agreed.

1.18 If your Hosted phone service solution includes our Ethernet, EFM or Assured access then, unless you have ordered an installation of the router, it is your responsibility to install the router at the Site or Sites where this is required and neither we nor our subcontractor shall bear any liability for any delay your failure to install may cause.

1.19 We will maintain your Service to the Service Demarcation Point.

1.20 Where we agree you may use/supply your own router for any part of the Service then you agree that all responsibility and liability for such equipment remains with you. Should we or our subcontractor visit your Site due to a fault which is later found to be caused by equipment not provided by us then we will charge you for such site visit and any additional costs incurred as a direct result. Use of your own router(s) will affect the Demarcation Point of the Service.

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1.21 We do not issue any IP address to be used with this Service. Access to and use of this address is controlled by the internet authorities and its use is subject to any rules which they may prescribe. We reserve the right to withdraw or change this address if for any reason the address ceases to be available.

1.22 We will provide you with an internet portal account through which the Service can be controlled online. We shall use reasonable endeavors to maintain (but do not guarantee) access to such account 24 hours in every day on every day of the year and we shall not be liable for any losses caused by any restrictions in such access.

1.23 If you request and we agree to upgrade your bandwidth of the underlying access, then additional charges will apply, and we will advise you of these at the time.

1.24 The Service supports 999/112 public emergency call services and such calls will be routed to the national emergency call handling agents. However, these services do not operate in the same way as PSTN fixed line 999/112 public emergency call services and connection to such services may not be possible in the event of a service outage caused by loss of connectivity to the internet for whatever reason. In such circumstances you should use a separate line to make the emergency call. Furthermore, it may on occasions not be possible for emergency services personnel to identify your location and telephone number so this information should be stated promptly and clearly by you when making such a call.

1.25 Where we agree that you may use your existing or other new access circuits (including but not limited to broadband, Ethernet, leased line etc) not provided by us then it is your responsibility to ensure such access meets the necessary requirements and functionality as defined in the non-21CNS access Customer responsibilities document, a copy of which is available on request. Your failure to meet such requirements and functionality may result in quality and set up issues or may mean the Hosted phone service solution will not work. Where we do not provide the access, you agree that all responsibility and liability for such access remains with you. Should we or our subcontractor visit your Site due to a fault which is later found to be caused by access not provided by us then we will charge you for such

site visit and any additional costs incurred as a direct result. Use of your own access will affect the Demarcation Point of the Service.

1.26 Where we agree that you may use a third party to install the Service then you agree to indemnify us from any direct or indirect claims or losses, financial or otherwise, that you may incur as a result of such installation by a third party. Use of a third-party installer will affect the Demarcation Point of the Service.

1.27 At the end of each Working Day, if requested by us, you agree to sign off for the work carried out that day by us or our subcontractor. In the absence of an authorised representative then you agree that our sign off shall have equivalent effect as if you had signed it off. Such sign off shall not constitute full Acceptance as defined in Clause 2.

1.28 Where we provide you with any of the user based features (including but not limited to auto attendant, hunt group, call park, call pickup, call queue etc) and you have not allocated these features to a user then we reserve the right to recover such unallocated features from your account. You can replace these features or add additional features at any time.

## 2. ACCEPTANCE

2.1 We will notify you when the Installation Service has been completed. You will inspect and test the Service for the purpose of Acceptance ("Acceptance Testing"). During Acceptance Testing, you may notify us by email, telephone or fax of any material non-conformity of the Service.

2.2 To the extent that such non-conformities will have, in our opinion, a material detrimental effect on the Service, we will use our reasonable endeavors to remedy such non-conformities.

2.3 Acceptance shall be on an individual site by site basis and shall take place on the earlier of:

- a) your written confirmation to us or our subcontractor that the Acceptance Testing has been completed,
- b) where you have not notified us under Clause 2.2, five (5) Working Days from the date of our notification to you that the Installation Service has been completed, or
- c) where you have notified us under Clause 2.2 of material non-conformities, five (5) Working Days from the date on which the notified non-conformities were remedied, or immediately

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upon our demonstration that the notified non-conformities will not, in our opinion, have a detrimental effect on the Service.

2.4 Any additional time incurred by us remedying non-conformities notified by you under Clause 2.2 above shall, at our sole discretion, be reflected in corresponding extensions to the affected timescales in the project plan (if any). Any additional time incurred by us investigating any notified non-conformities which later are found not to exist, will be charged to you as a professional service on a time and materials basis in accordance with our then current standard rates.

### 3. YOUR OBLIGATIONS

3.1 You will be responsible for procuring any third-party consents that may be required by us (and/or our subcontractors) to provide the Installation Service and/or the Service, including, for example, landlord consents, wayleave consents and access consents. You will be responsible for the costs of procuring any such third-party consents.

3.2 You will be responsible for providing named contacts (and any replacement contact(s)) and ensuring that they have the appropriate level of authority to make decisions relating to the Installation Service and the Service.

3.3 Where any part of the Service is a professional service to be provided at a Site, you will ensure that our staff and contractors have a safe place to work, and you will notify us (and our contractors where applicable) of any health and safety rules which apply to that Site. We will use our reasonable endeavors to ensure that our staff and contractors comply with such rules when working on your premises.

3.4 You will:

3.4.1 perform all your obligations under the Contract,

3.4.2 follow our reasonable instructions,

3.4.3 provide us with up-to-date information, cooperation, support, and access, at your cost, to enable us to perform our obligations under the Contract,

3.4.4 provide us with office, information technology, and telecommunications facilities (including full remote access), at your cost, to enable us to perform our obligations under the Contract,

3.4.5 supply on an ongoing basis, at your cost, all space, power supply access points, cables,

trunking, electricity, air conditioning and any other facility as may be defined following the site survey required to receive the Installation Service and the Service, and

3.4.6 keep full and up-to-date secure backup copies of the data on the Network in accordance with good industry practice, and

3.4.7 comply with and maintain compliance with all such laws and regulations that relate to their provision of telecommunications and other products or services supplied by us.

3.5 You will not allow any unauthorised user or any third party to access or use the Equipment and / or the Service, and shall take all reasonable security precautions to avoid such unauthorised access or use, and / or add to, modify, or interfere with in any way, the Equipment and / or the Service.

3.6 The Services permits you to upload music files for the music on hold feature. You agree to obtain any necessary licenses and consents as may be required and agree to indemnify us from any direct or indirect claims where you fail to do so.

### 4. YOUR USE OF THE SERVICE

4.1 You will not use the Service in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction) ("Laws"). You will indemnify, and keep us fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Service (or its use) infringes any Laws.

4.2 You warrant that any material and / or communication received, transmitted, hosted, or otherwise processed using the Service will not be menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations, or laws to which the Service is subject, and will not infringe the intellectual property rights of 21<sup>st</sup> Century Network Solutions Limited, Adaptive Communication Solutions Limited or any third party. You will indemnify and keep us fully indemnified against all costs, claims, demands, expenses and liabilities arising out of or in connection with any breach or reasonably

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suspected breach of this Clause 4.2.

4.3 You agree that:

4.3.1 all Equipment will be housed in accordance with our or our subcontractors' instructions,

4.3.2 Equipment shall be kept at your premises and stationery at all times,

4.3.3 you will not add, modify, relocate, reconfigure or in any way interfere with the Equipment,

4.3.4 you will not cause the Equipment to be removed, repaired, serviced or otherwise attended to except by our authorised representative,

4.3.5 you will not remove, tamper with or obliterate any words or labels from the Equipment of any parts thereof,

4.3.6 you will not use the Equipment except in accordance with such written instructions as may be notified by us or our subcontractor from time to time,

4.3.7 you will not use any Equipment not approved in writing by us,

4.3.8 you are responsible for maintaining all in life changes by using the online portal. You agree to pay our standard charges applicable at the time where you request us to make changes on your behalf.

4.3.9 You shall indemnify 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited arising out of or in connection with breach by you or other act or omission by you under or in relation to this agreement.

## 5. EQUIPMENT MAINTENANCE

5.1 If ordered, the Equipment Maintenance service level will be as detailed in the 21CNS Terms and Conditions or quotation.

5.2 Equipment Maintenance covers Equipment provided as part of the Installation Service but for the avoidance of doubt it excludes, but is not limited to, the following: any Equipment not provide by us or our subcontractor, cabling or telephone handsets where provided.

5.3 Equipment Maintenance cover must be taken at the time of ordering the Service and cannot be added subsequently.

5.4 Equipment Maintenance cover is provided in accordance with the Equipment Maintenance Service Description which is available on request.

5.5 We shall not be liable for any failure to achieve the required service level to the extent that such failure results from: your breach of any of your obligations under these terms,

5.5.1 a failure attributable solely to the use of public telecommunications links,

5.5.2 an event of force majeure or matter beyond our reasonable control as defined 21CNS Terms and Conditions.

5.6 Without prejudice to any other right or remedy you may have under this Agreement, if we fail to meet any of the service level commitments, we will use reasonable endeavors to remedy such failures which will include us or our subcontractor:

5.6.1 investigating the cause of the failure or problem and discussing investigation results with you,

5.6.2 finding a solution to such failures that is acceptable to you,

5.6.3 advising you of the status of all remedial efforts.

5.7 In the event that the failure to achieve the required service level is only partially the result of any matter falling within Clause 5.5 the actual performance of us or our subcontractor in relation to the required service level shall be adjusted to such level as the parties agree would have been achieved but for the impact of such matters. In the event that the parties are unable to agree upon the appropriate adjustment the matter shall be referred to an expert for determination.

5.8 Equipment Maintenance is subject to a fair use policy. We may have to curb the usage of the Equipment Maintenance service should you become a persistently high user of the Equipment Maintenance service whereby it can be shown that the causes of the usage are configuration changes initiated by you and not network faults or errors. We will engage with you to ascertain the reason for persistent high usage and work on solutions that will allow the usage to return to a more reasonable level. In cases of sustained high usage due to configuration changes initiated by you then we reserve the right to notify you that the work will become chargeable and then charge you the hourly rate as applicable at the time.

5.9 If Equipment Maintenance has not been

ordered, then the replacement of the faulty Equipment is dependent upon the warranty offered by the relevant manufacturer. If an additional engineer visit is required, then this will be chargeable to you and will be arranged within usual working hours. Except where a relevant Equipment Maintenance contract is entered into, we will provide assistance to you in dealing with manufacturers but we will accept no liability in respect of any defect or breakdown of Equipment or any losses, financial or otherwise, as a direct result of such defect or breakdown.

5.10 Save as expressly provided by this Clause 5 we do not give any warranty condition or undertaking as to the state of such Equipment other than that the configuration work will be performed correctly.

5.11 Equipment Maintenance cover is provided for the duration of the initial minimum term as specified on the 21CNS Terms and Conditions. At the end of the initial minimum term, the contract will automatically renew for a further period of twelve (12) months, on a rolling twelve (12) month basis, unless we receive prior notice from you giving a minimum of sixty (60) days written notice of your wish to terminate the Equipment Maintenance cover. Termination of the Equipment Maintenance cover does not constitute termination of the Service unless specifically requested by you.

## 6. RISK AND WARRANTY

6.1 On delivery of the Equipment to you full risk of damage to, or loss of, such equipment shall pass to you.

6.2 For a minimum period of thirty (30) days from delivery, if any Equipment materially fails to comply with the manufacturer's specifications (a "defect"), you will immediately notify us of such defect, and we will investigate such defect. If we agree that the Equipment has a defect, we will replace the Equipment.

6.3 Where we agree you may provide your own equipment at the outset or as a replacement, you will, at your own cost, be responsible for repairing, maintaining, and replacing any equipment that no longer operates in accordance with its manufacturer's specifications. Where you replace the Equipment, the replacement shall be (i) equivalent to the original's functionality and

performance, and (ii) approved by us in writing. You will be responsible, at your own cost, for (i) reconfiguring any replacement of the Equipment to the same or equivalent configuration as the original (if agreed by the parties, such reconfiguration work may be provided by us as a professional services at our then current standard rates), and (ii) installing such reconfigured replacement in place of the original.

6.4 Any impact on the Service caused by substandard performance or non-availability of the Equipment under Clauses

6.2 or 6.3 shall be excluded from our service level obligations under the Agreement, and such exclusion shall continue for as long as any of the circumstances in Clauses 6.2 or 6.3 continue.

## 7. FEES AND PAYMENT

7.1 All pricing will be indicative only and is not binding until confirmed by us. The pricing given is valid at the point of quote, but it can only be confirmed after the site survey. Additional charges, such as but not limited to excess construction charges, may be applied, following the site survey. All prices are quoted are exclusive of VAT. Prices are valid for 30 days only.

7.2 Following Acceptance, you must pay the Service Fee monthly in advance, the Installation Fee upfront and any usage fees, if applicable, monthly in arrears. If specified on the 21CNS Terms and Conditions, you may pay the Installation Fee monthly in advance in lieu of the upfront fee.

7.3 Unless otherwise agreed by us in writing, any discount specified on the 21CNS Terms and Conditions shall only apply during the Initial Term and shall not apply to subsequent Service periods.

7.4 After the Initial Term, we shall be entitled to revise any fees under the 21CNS Terms and Conditions to reflect our then current standard rates by giving you not less than thirty (30) days written notice.

7.5 We shall be entitled to increase the Service Fee at any time with immediate effect where we can reasonably demonstrate that such an increase is due to an increased cost of providing the Service caused by a third-party supplier, or legal or regulatory change. Any such increase in the Service Fee will not exceed the increased cost incurred by us in providing the Service.

7.6 We may require you to pay a deposit and /

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or require you to procure that your parent company or related company guarantees the payment of any fees under the Agreement. You agree to enter into (and / or procure the execution of) any agreement or deed reasonably required for any such purpose.

7.7 All Charges due to us for traffic routed via any IP address to be used with this service shall be paid in full by you by the due date notwithstanding that they may have arisen from unauthorised, fraudulent or illegal use (except for fraud on the part of us or our employees acting in the course of their employment) and whether or not they derive from installation and access arrangements which have been authorised by us.

7.8 Should any of your site configuration change following site survey and additional engineering time or equipment is required to fulfil the installation, to avoid the need for a re-scheduled appointment, you agree to any additional works that may be carried out by our engineer up to a value of £500 without us seeking further confirmation from you. Should the value exceed £500 then we will only carry out this additional work on your written or email confirmation.

7.9 You will, unless otherwise agreed, pay invoices within 14 days of the date of the invoice.

7.10 Any invoices which are disputed must be done so within 3 months of the Invoice Date otherwise the invoices will be deemed to be correct. If you wish to dispute an invoice you must write to us and provide us with (i) nature and reason for dispute, (ii) amount in dispute, (iii) any evidence to support the disputed amount.

7.11 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).

7.12 Payments will be by Direct Debit only. If a direct debit is dishonored or cancelled we shall be entitled to pass on to you any administration fee which may include third party charges. We shall also be entitled to charge you a monthly administration fee for each month in which your direct debit is dishonored or not reinstated following cancellation. Details of applicable fees are available on request. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 8% above the base rate of the Barclays Bank PLC, to run from the due date

of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.

## 8. SERVICE SUSPENSION

8.1 By giving reasonable notice to you, or if this is not practicable, such notice as is reasonably practicable in the circumstances, we may suspend the Service (or any part of the Service) for reasons to include but not limited to:

8.1.1 for operational reasons in accordance with the service levels, or

8.1.2 if required because of a regulatory or legal change, or

8.1.3 if we are obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension to the Service, or

8.1.4 if your use of the Service may damage or disrupt the proper functioning of the infrastructure and / or equipment used to provide services to our other Customers, or

8.1.5 if we have reasonable grounds to believe that you are in breach of your obligations, and you either fail to remedy that breach or fail to demonstrate to our reasonable satisfaction that no breach took place within two (2) Working Days of written notice of the suspected breach for a serious breach (serious breach to include, but not limited to, a breach likely to cause serious damage to us or our brand, or that of our contractors, or result in legal action by a third party) or within ten (10) Working Days of written notice of the suspected breach for other breach, or

8.1.6 if an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the due date, provided that we have given you at least five (5) Working Days' notice of such non-payment.

8.2 Suspension of the Service shall cause our service level obligations to be excluded for the period of the suspension. Such suspension of the Service shall continue for as long as any of the circumstances in Clauses 8 continues.

## 9. TERM AND TERMINATION

9.1 Your obligations under this Agreement will commence on the date you sign the 21CNS Terms and Conditions. The term of the contract as indicated on the 21CNS Terms and Conditions will start on the date of Acceptance

and, for multi Sites, is applicable on an individual Site by Site basis. The contract will then continue for the initial minimum term stipulated within the 21CNS Terms and Conditions. For the avoidance of doubt, if not specified on the 21CNS Terms and Conditions, the initial minimum term of contract is thirty-six (36) months. At the end of the initial minimum term, the contract will automatically renew for a further period of twelve (12) months, on a rolling twelve (12) month basis, unless we receive prior notice from you giving a minimum of sixty (60) days written notice of your wish to terminate the Service. Such termination is not to take place earlier than the expiry of the current term or renewed term.

9.2 We shall have the right, by giving written notice to you, to terminate the Agreement immediately if you:

9.2.1 commit any material breach of your obligations and fail to remedy that breach within twenty-eight (28) days of written notice of that breach. The twenty-eight (28) day period only applies where a breach is capable of remedy; if it is incapable of remedy, the Agreement may be terminated by written notice immediately), or

9.2.2 have a winding up petition presented, or enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency), or makes an arrangement with your creditors or petitions for an administration order, or has a receiver or manager appointed over any of your assets, or generally becomes unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986.

9.3 We may terminate the Service or part thereof on 60 days written notice to you provided that such notice extends the termination date beyond the end of the minimum term as set out in the 21CNS Terms and Conditions.

9.4 Where the Agreement is terminated or otherwise brought to an end, all Service Fees for the remainder of the initial term or the renewed term (as applicable) shall become payable immediately.

9.5 If you cancel an ordered Service or any part of it, notwithstanding that such order has only been provisionally accepted by us, you agree to reimburse us for any costs we have incurred in preparing to deliver the Service in addition to the standard cancellation charge, as

may be applicable at the time. We will take all reasonable steps to mitigate any such costs but in the case of cancelling an Installation Service then the cancellation charge may include the cost of lost revenue incurred whilst we or our subcontractors re-allocate staff who would have otherwise been engaged in your installation where we cannot re-allocate such staff at short notice and this does not constitute a penalty. If you have had a site survey you will pay the full site survey charges. If the Service includes any excess construction charges such charges will be payable in full by you on cancellation of an ordered Service. If we have provided you with any Equipment you will return such Equipment to us immediately in full working order at your cost.

9.6 We shall have the right to terminate the Agreement immediately if required because of a regulatory or legal change or are required to do so by a direction of Ofcom.

## 10. LIABILITY

10.1 We shall not be liable for any delay or failure in performing our obligations or failure to meet any dates under the Agreement caused by any circumstances beyond our reasonable control (such circumstances including, without limitation, any regulatory or legal change).

10.2 All warranties, conditions, obligations, or implied terms which are implied into the Agreement by statute, custom, or law are hereby excluded to the maximum extent permissible in law.

10.3 We do not exclude or limit our liability for death or personal injury caused by our negligence, and/or

10.3.1 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 (seller's implied undertaking as to title, etc.), and / or

10.3.2 breach of the obligations arising from section 2 of the Supply of Goods and Service Act 1982 (implied terms about title, etc. in certain contracts for the transfer of property in goods), and / or

10.3.3 fraudulent misrepresentation.

10.4 We shall not be liable to you for any loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, loss of data and / or perceived damage to reputation.

10.5 We have no liability for any failure to meet the Required Date or for any failure to meet any service levels or to repair a fault within any given timeframe.



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10.6 The overall Service may consist of elements not provided by 21CNS (such as but not limited to access circuits, routers, installation) which affects the Service Demarcation Point. You agree that we shall not be responsible or liable for any element of the overall Service not provided by 21CNS nor for any affect the non-21CNS elements may have on the Service.

## 11. DEFINITIONS

**"Acceptance"** – acceptance by you that the Service has been completed successfully, in accordance with Clause 2.3. **"Equipment"** – the preconfigured router, power over ethernet switches (POE), handsets or any other Equipment we may provide as part of the Service.

**"Equipment Maintenance"** – an optional feature providing on-going maintenance of some Equipment provided as part of the Service and the Installation Service as further detailed in the **"Equipment Maintenance Service Description"**.

**"Network(s)"** – the Local Area Network, network equipment, computer systems, and local cable infrastructure, at the Sites, to which the Service will be connected.

**"Installation Fee"** – the combined charge for the survey, equipment and the Installation Service, including excess construction charges, as specified on the 21CNS Terms and Conditions or other amended documentation following site survey. **"Installation Service"** – the work (if any) carried out by us or our subcontractor at each Site to enable you to receive the Service, normally carried out between 0900 and 1730 on a Working Day.

**"Required Date"** – the date you wish the Service to commence. **"21CNS Terms and Conditions"** – our completed and signed order form for services and / or products incorporating the 21CNS Terms and Conditions form(s).

**"Service"** – the services, as specified on the 21CNS Terms and Conditions, and as may be further detailed in the Quotation and / or the survey form(s) detailing the Sites, Installation Service, Equipment, and Service, the related configuration, solution design, and setup of these, and any project documentation for the Installation Service.

**"Service Demarcation Point"** – the point(s) to which we will maintain the Service(s). The

Service Demarcation Point will be based on the different components that make up the Service and how these are deployed. The Service Demarcation Point for the main Hosted phone service solution is typically identified as the connection between the access and the Hosted phone service solution, managed by our Session Boarder Controllers (SBCs) within the network. Where we have supplied the access with the Hosted phone service solution, the point of demarcation will be the customer side port on the pre-configured 21st supplied router. Where we provide the access and the Installation Service and you take the Equipment Maintenance then the Demarcation Point will be the 21st provided handset. In all cases 21st will honour any manufacturer warranty on the 21st provided handsets.

**"Service Fee"** – monthly recurring fee for the Service which may be individual fees for individual Services or a combined fee covering multiple Services.

**"Working Day"** – any day falling on or between Monday to Friday, but excluding all English public and bank holidays.

**"You"** – the entity which contracts with us.

**"We" or "Us"** – 21<sup>st</sup> Century Network Solutions Ltd, and / or our chosen subcontractor(s).