

# AdaptiveComms On-Premises Maintenance Terms & Conditions

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

- (i) THESE CONDITIONS
  - (ii) THE MAINTENANCE AGREEMENT
  - (iii) THE ORDER QUOTAION
  - (iv) THE RELEVANT TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU
  - (v) THE ADAPTIVECOMMS CONDITIONS FOR COMMUNICATION
- AND
- (vi) ANY OTHER RELEVANT PRODUCT SPECIFIC CONDITIONS, all of which are available on [www.adaptivecomms.co.uk](http://www.adaptivecomms.co.uk)

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## Terms of Reference

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

1.2 - "Customer" means the party purchasing the Service, as named in the Order.

1.3 - "Service" means any and all of the services that the Supplier has agreed to supply to the Customer, as set out in the Maintenance Agreement.

1.4 - "Site" means any or the entire Customer's sites at which the Supplier is providing the Service.

1.5 - "Supplier" means Adaptive Communications Solutions Ltd (Company number 4677602) Trading from 11b Hoghton St, Southport, Merseyside, PR9 0NS.

1.6 - "Supplier's Equipment" means any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Service.

1.7 - "Working Day" means 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Supplier.

1.8 - Any reference in this Agreement 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.

1.9 - PABX means telephone system equipment as specified in the quotation referenced in the Maintenance Agreement, the terms PABX and Equipment are interchangeable and both terms may be referred to and remain binding within this document.

AdaptiveComms has agreed to provide, and the Customer has agreed to engage AdaptiveComms to provide the maintenance services in respect of the Equipment as described in the Maintenance Agreement provided, upon and subject to the terms and conditions of this Agreement and the Maintenance Agreement here to referred to as ("the Agreement").

This Agreement shall override any terms and conditions contained in or referred to in any document from the Customer and shall supersede all prior agreements, offers and discussions (oral or written) between the parties regarding the subject matter of the Agreement. No amendment or variation may be made to this Agreement unless agreed (as an amendment or variation) in writing by a Director of AdaptiveComms. If this Agreement has not been executed by the Customer prior to the commencement of the Services it shall be binding on the Customer when the Customer accepts the Services. AdaptiveComms may subcontract some or all of its responsibilities under this Agreement to a third party.

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## 1. MAINTENANCE PERIOD AND CHARGE

- (a) This Agreement shall start on The Commencement Date specified in the maintenance contract and shall continue for the minimum term of 5 years and thereafter from year to year (each year starting on the anniversary of The Commencement Date) until terminated by Notice in writing by either party to the other, such Notice to be received a minimum of 90 days prior to the next anniversary of The Commencement Date (referred to hereafter as the “Notice”). Such Notice will be acknowledged in writing by AdaptiveComms within 5 working days of its receipt of the Notice, the acknowledgement being sole evidence that Notice has been given. The Customer is therefore strongly advised to submit any Notice in good time and confirm receipt of the Notice by AdaptiveComms. Any amendment to the minimum contract term must be clearly stated in the maintenance contract and countersigned by a Director of AdaptiveComms.
- (b) The Annual Maintenance Charge for the initial period of 12 months shall be the charge specified in the Maintenance Agreement. The Annual Maintenance Charge for periods after the initial 12 month period will be as specified in the Maintenance Agreement but may be adjusted by a rate not exceeding the variance indicated by the BEAMA (The Federation of British Electrotechnical and Allied Manufacturers’ Associations) indices for Electrical Engineering during the twelve month period prior to the review. The Annual Maintenance Charge for each year during which this Agreement continues shall be paid before the date on which that year begins together with any applicable VAT or other tax, unless a monthly payment plan has been agreed with AdaptiveComms, in which case the monthly payment together with any applicable VAT or other tax will be taken by Direct Debit – payable to 21st Century Network Solutions Ltd. Should valid Direct Debit Details not be agreed and supplied by the notified collection dates, AdaptiveComms reserve the right to charge an additional administration fee of up to £50 per month.
- i. If Notice is given, as defined above, before the expiry of the minimum term shown then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.
  - ii. If Notice is given, as defined above, after the expiry date of the minimum term shown then payment is due up to the end of the current year of cover.
  - iii. If Notice is not given, this agreement will be deemed to continue from year to year.
  - iv. Where Notice has been given, AdaptiveComms shall cease to provide service immediately after the period for which payment has been received.
- (c) AdaptiveComms may from time to time increase its Annual Maintenance Charge by an amount exceeding the BEAMA rate and shall give the Customer 30 days’ prior written notice of such increase (“the Price Increase Notice”). The Customer shall have the right to terminate this Agreement by written notice within 30 days of receipt of the Price Increase Notice without affecting the accrued rights of AdaptiveComms.

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- (d) If in AdaptiveComms opinion (acting reasonably) it becomes uneconomic to maintain the Customer's telephone system, AdaptiveComms reserves the right to give the Customer 30 day's termination notice at any time.
- (e) Without prejudice to its other rights and remedies, in the event that full settlement is not received in respect of an invoice prior to the service commencement date to which the invoice relates, AdaptiveComms may charge the Customer a £50 (plus VAT) administration fee, together with interest at 8% above the prevailing base rate of Barclays Bank plc from the due date until payment is received by AdaptiveComms.

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## 2. MAINTENANCE AND REPAIR

- (a) During the period of the Agreement, in consideration of the payment of the Annual Maintenance Charge, AdaptiveComms shall as soon as is reasonably practicable after notification in accordance with Clause 6(a) below provide the services of a maintenance engineer to carry out any maintenance of and repairs and replacements to the Equipment that may be reasonably requested by the Customer and shall carry out free of any extra charge any maintenance, repairs and replacements (including the provision of any necessary materials and spare parts) as shall be necessary as a result of fair wear and tear arising from the proper operation of the Equipment. Replacement parts will become the property of the Customer, and replaced parts the property of AdaptiveComms. Replacement parts will be of at least equivalent functionality but may not be identical model or colour. Any additional items added to the system after purchase will become maintained at a rate of 10% per annum. Payment for additional parts will start running immediately and will not benefit from 1 year free. Additional equipment will be deemed part of the contract and have the same termination dates, rights and so forth as the equipment we have agreed to initially maintain herein. Any maintenance, repairs or replacements or Customer visits caused other than by fair wear and tear may be carried out at the Customer's expense at AdaptiveComms rates. The response time for these faults will be guided by the service level shown in the maintenance agreement and further defined in Clause 2(c) below. All maintenance, repairs or replacements may be carried out at the premises where the Equipment is installed or elsewhere at the option of AdaptiveComms. For the avoidance of doubt AdaptiveComms response may be fulfilled either by accessing the system remotely with a view to diagnosing the fault or by having an engineer attend site with a view to diagnosing the fault.
- (b) This Agreement does not cover the following items unless they are specifically detailed in the Maintenance section in the Maintenance Agreement or incorporated by way of a supplementary contract as described in 3(c) below
- i. Overhead, underground, concealed internal or external cabling.
  - ii. Two wire telephone handsets, otherwise known as POT Phones.
  - iii. Structured cabling systems such as CAT5.
  - iv. On PABX systems, cabling from the telephone system central processing unit to the line-jack unit.
  - v. Call loggers, voicemail, battery backup including batteries and other additional ancillary equipment.
  - vi. Cleaning of equipment; commissioning, programming or de-commissioning of the system or part thereof.
  - vii. Deck handsets and bare stations.

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- (c) This Agreement does not cover preventative maintenance visits, which may be arranged with AdaptiveComms for an additional fee.
- (d) Definition of Level of Service as detailed in the Maintenance Agreement:
- i. Standard – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 16 working hours, Monday to Friday, 9.00am to 5.00pm, excluding public and bank holidays.
  - ii. Standard Plus – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 8 working hours, Monday to Friday, 9.00am to 5.00pm, excluding public and bank holidays.
  - iii. Enhanced – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 4 working hours, Monday to Friday, 9.00am to 5.00pm, excluding public and bank holidays.
  - iv. Enhanced Plus – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 4 working hours, Monday to Sunday, 9.00am to 5.00pm, excluding public and bank holidays.
  - v. Premium 365 – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 4 working hours, Monday to Sunday, 9.00am to 5.00pm, including public and bank holidays.
  - vi. Premium 365/247 – AdaptiveComms will respond to the fault either remotely or by sending an engineer to site within 4 working hours, Monday to Sunday 24 hours a day, including public bank holidays.
  - vii. A customer may not downgrade to a lower Level of Service, where a customer upgrades to a higher Level of Service, this level will be assumed for the remainder of the minimum contract term.
- (e) Where the Customer requests that the remedial work carried out by AdaptiveComms is done outside of the contracted hours then AdaptiveComms may charge at its current rates for this.
- (f) Where a fault has been logged and AdaptiveComms has responded and no fault exists on the Equipment then this is deemed to be an "Abortive Visit". Abortive Visits will be charged to the Customer at AdaptiveComms current rates. Where a fault has been logged and AdaptiveComms is unable to gain access to the Customer's premises during the hours contracted then AdaptiveComms may charge the Customer an Abortive Visit call out fee.
- (g) Where parts are delivered to the Customer and the Customer is due to return an equivalent part to AdaptiveComms, AdaptiveComms will invoice the Customer the normal selling price of the part in the event that the part is not returned to AdaptiveComms within two weeks of receipt by the Customer of the replacement part. AdaptiveComms will also invoice the Customer for the cost of repairing any

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damage to the part which reasonably appears to have been caused by the inadequate packaging by the Customer.

- (h) Where parts are delivered to the Customer by courier and/or electronic worksheets are used, the Customer agrees that electronic signatures applied in acknowledgement of parts delivered or services rendered will have the same legal force as hard copy signatures.
- (i) It is understood that AdaptiveComms cannot make appointments to carry out remedial work to faults. AdaptiveComms operates an allocation and scheduling system that prioritises faults according to severity of the fault and the level of cover provided. AdaptiveComms will endeavour to attend the fault at the earliest opportunity within the cover period. Any estimates relating to the time that engineers will either attend site or respond remotely are only best indications and must not be taken as firm appointment times. AdaptiveComms cannot be held responsible for responding to faults at a different time to that estimated.
- (j) For the purpose of Clause 2(d) any reference to public and bank holidays shall refer to the public and bank holidays that exist in England
- (k) AdaptiveComms is not responsible for providing software upgrades, enhancements or patches free of charge.
- (l) For health and safety reasons, AdaptiveComms reserves the right to decline to attend the Customer's site if AdaptiveComms engineer will be alone on site or in an isolated area of the site.

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## 3. ALTERATIONS TO EQUIPMENT AND EXTENSION WIRING

- (a) For health and safety reasons, AdaptiveComms reserves the right to decline to attend the Customer's site if AdaptiveComms engineer will be alone on site or in an isolated area of the site.
- (b) All alterations to apparatus and extensions to wiring (including removal and reinstallation to a new site) shall be carried out by an installer authorised by AdaptiveComms. AdaptiveComms reserves the right to carry out a Maintenance Acceptance Test ("MAT") on this new equipment. AdaptiveComms may charge at its current rates for this MAT.
- (c) Any alterations to Equipment and wiring shall be notified to AdaptiveComms at least 3 working days before the commencement of the works.
- (d) AdaptiveComms may adjust the Annual Maintenance Charge if the Equipment is altered, in accordance with its current level of charges. In this event, the Customer shall sign a supplementary contract, detailing the additional equipment and the additional maintenance charge.
- (e) Where insufficient notice is given in accordance with Clause 3 (b) above then AdaptiveComms may ask for proof of the date of installation relating to any additional equipment and AdaptiveComms may retrospectively charge for the maintenance of this equipment in line with its current rates.
- (f) For the avoidance of doubt if the Customer adds new parts to the Equipment detailed in the Agreement, then this will be automatically maintained by AdaptiveComms, at AdaptiveComms discretion. AdaptiveComms will as a consequence invoice the Customer for the maintenance of these new parts.

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## 4. INSPECTION OF INSTALLATION

AdaptiveComms may request to carry out an MAT prior to responding to the first fault that is logged. AdaptiveComms may carry out the MAT as a separate visit. If the MAT is passed then faults may be logged with AdaptiveComms and service will commence. If the MAT is failed then AdaptiveComms reserves the right to request that any specific remedial action be carried out (at the Customer's cost) prior to attending to any fault. Where the MAT is failed but where any necessary remedial action can be carried out by AdaptiveComms then AdaptiveComms may carry this out and charge this to the Customer at its current rates.

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## 5. CARRIER'S LIABILITY

Where the fault that has been logged has been a non-system fault, but instead one of the carrier (i.e. British Telecom or Cable & Wireless etc) and AdaptiveComms does not route the Customer's call traffic then this will be deemed an Abortive Visit and will be charged at AdaptiveComms current rates and also charge the Customer for the call out and any parts used at its current rates. AdaptiveComms will provide a carrier fault reference that can be used to recharge the cost that AdaptiveComms has charged, on to the carrier.

AdaptiveComms cannot accept responsibility where the carrier refuses to cover all these costs. Where AdaptiveComms carries the call traffic then the call out charge will not apply.

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## 6. THE CUSTOMER'S RESPONSIBILITIES AND LIABILITIES

- (a) The Customer shall notify AdaptiveComms either orally or in writing as soon as possible of any fault in the Equipment or of any work or maintenance that may be necessary. AdaptiveComms may at its option repair at its current rates faults or damage that has arisen because of the failure of the Customer to notify AdaptiveComms properly.
- (b) The Customer shall not allow the Equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by AdaptiveComms in relation to the operation and care of the Equipment. AdaptiveComms may at its option repair at its current rates faults or damage that has been caused by such moving, interference or tampering or by any failure by the Customer to comply with AdaptiveComms directions.
- (c) Should any maintenance, repair, replacement, alteration or addition be made to the Equipment other than by AdaptiveComms or its authorised installer, AdaptiveComms may terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge, in cases where maintenance is paid monthly, the customer shall be liable for all payments up to the end of the minimum contract term.
- (d) The Customer shall at its expense comply with all statutory requirements, bylaws, obligations, regulations, recommendations or instructions relating to the use or testing of the Equipment. The Customer shall obtain and pay for any licences, way leaves, suitable private wires, jack sockets or any other items necessary for the operation of the Equipment. Suitable electric supplies where needed shall be provided and maintained by the Customer at its expense.
- (e) The Customer shall give AdaptiveComms and its representative's unhindered access to the Equipment and shall at its expense make available mains electric supply and any other facilities, services and cooperation as may be necessary for the proper and prompt maintenance or repair of the Equipment under this Agreement.
- (f) The Customer shall ensure site plans are accessible to AdaptiveComms on each visit. The Customer shall ensure that all programming performed by a third party is backed up and made available to AdaptiveComms. It is advised that both the site plans and programming diskette are located next to the system.
- (g) Where the system and customer environment allows remote access, it is the Customer's responsibility to provide a suitable VPN access in order for AdaptiveComms to respond adequately to any fault. Where access is deliberately denied then AdaptiveComms may increase the Annual Maintenance Charge by up to a further 50%.
- (h) The Customer shall maintain an environment suitable to support efficient operation of the Equipment. The Customer is responsible for any damage caused by electrical surges, flooding, lightning, over heating or other external influences, which do not

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constitute fair wear and tear. AdaptiveComms will charge the Customer for parts and labour in respect of such damage at its current rates. In the event of disagreement as to whether work is chargeable or not, AdaptiveComms may provide reasonable but not necessarily absolute evidence of such external influences, however the Customer's signature on a relevant chargeable job sheet will in any event signify its acceptance that the work is chargeable.

- (i) Prior to commencement of work by AdaptiveComms at the Customer's Premises, the Customer shall inform AdaptiveComms employees attending the Premises of all relevant health and safety regulations relating to the Premises and any issues relating to dangerous substances, asbestos and similar risks, and the Customer shall comply with all relevant legal requirements including its employer's duties under health & safety legislation.
- (j) Where the Customer's internal control procedures require a purchase order to be raised for chargeable work undertaken by AdaptiveComms, it is the Customer's responsibility to ensure that this occurs: AdaptiveComms can accept no delay in payment due to the absence of such purchase order.
- (k) If the Customer fails to observe the provisions of this Agreement, AdaptiveComms may decline to respond to a fault and/or may terminate the Agreement with immediate effect by giving the Customer written notice and may retain the Annual Maintenance Charge, in cases where maintenance is paid monthly, the customer shall be liable for all payments up to the end of the minimum contract term.
- (l) AdaptiveComms shall not be liable for any costs, or consequential losses or consequential costs relating to telephone calls or any malicious acts resulting from these telephone calls made in a malicious or otherwise manner, made through the telephone system either from within the Customer's premises or by a third party obtaining access to the Customer's system. For the avoidance of doubt, the security of the Customer's telephone system is the sole responsibility of the Customer regardless of any work carried out on the system by AdaptiveComms employees or subcontractors.
- (m) AdaptiveComms shall not be liable for any costs, or consequential losses or consequential costs resulting from the Customer's inability to perform pre-programmed tasks (for example analysis of call logging records) following work carried out by AdaptiveComms. Whilst AdaptiveComms will endeavour to minimise disruption to the Customer, the Customer acknowledges that it is solely responsible for such programming and reprogramming, and checking that programmes have not been affected by any work carried out on the Equipment.
- (n) In the event of failure of equipment where you did not have a working quality surge protector or uninterrupted power supply between your equipment and the mains electricity supply and where the AdaptiveComms representative (in their sole discretion) decides that failure may have been due to a power surge your maintenance will be void.

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## 7. LIABILITY AND INDEMNITY

- (a) AdaptiveComms will indemnify the Customer:
- i. against liability for personal injury or death directly attributable to the negligence of AdaptiveComms in the performance of this Agreement; and
  - ii. against physical damage (but not loss of any data or other consequential loss) caused to the Customer's tangible property directly arising from the negligence of AdaptiveComms in connection with AdaptiveComms maintenance of the Equipment. The Customer agrees to afford AdaptiveComms not less than 30 days in which to remedy any default under this Clause 7 (a) (ii).
- (b) AdaptiveComms total liability, other than that referred to in Clause 7(a) (i), to the Customer under the indemnities contained in this Clause 7 shall not exceed the Annual Maintenance Charge for one or more related claims arising in any one twelve month period.
- (c) Except for Clause 7(a) (i) and (ii) and subject to the provisions of this Clause 7 AdaptiveComms shall not be liable to the Customer for any loss, expense or damage of any kind (direct, indirect, or consequential and whether arising from negligence of otherwise) in connection with AdaptiveComms maintenance of the Equipment or otherwise.
- (d) The Customer acknowledges that the Annual Maintenance Charge reflects the limitations contained in this Clause 7. It is the Customer's responsibility to affect insurance cover in respect of all risks relating to the services of AdaptiveComms which are not covered by this Agreement or the liabilities accepted under this Clause 7.
- (e) AdaptiveComms does not accept any responsibility for system faults caused by telephone area code changes, changes in carrier services or as a result of any legislative changes.
- (f) AdaptiveComms accepts no liability for any claim relating to least cost routing programming.

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## 8. ENGLISH LAW

- (a) This agreement shall in all respects be governed by English law. The parties hereby irrevocably submit to the nonexclusive jurisdiction of the English courts.
- (b) The submission by the parties to such jurisdiction shall not limit the right of AdaptiveComms to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.
- (c) Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party at the address specified in Part 1 or Part 2 as appropriate, or any alternative address notified to the other party in writing.
- (d) In the event that the Customer is resident outside England any time limits in any proceedings shall not be extended by virtue only of the residence of the Customer.
- (e) A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.
- (f) Should any term or condition be found to be un-enforceable under English Law, all other Terms and conditions remain binding.

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## 9. GENERAL

- (a) Construction – The construction of this Agreement is not to be affected by any heading. Reference to the plural shall include the singular and vice versa.
- (b) Entire Agreement – This Agreement constitutes the entire agreement between the parties and there are no agreements or understandings between them other than those set out herein.
- (c) Variation – Any variation to this Agreement shall only be binding if it is recorded in a document signed by an authorised representative of AdaptiveComms. AdaptiveComms may vary this agreement by giving the Customer 14 days notice.
- (d) Waiver – Failure by AdaptiveComms to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- (e) Any express or implied waiver by AdaptiveComms of any term or condition of this Agreement or of any breach or default by the Customer may be terminated by AdaptiveComms at any time. No such waiver shall constitute a continuing waiver nor shall it prevent AdaptiveComms from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Agreement.
- (f) Force Majeure – AdaptiveComms shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control.
- (g) Assignment and Transfer – The Customer may not assign the benefit of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of AdaptiveComms. AdaptiveComms may assign the benefits and obligations of this Agreement without the prior consent of the Customer.
- (h) Agent – If a dealer/installer pays any part of this Agreement, he is acting as agent on behalf of the Customer.
- (i) Data Protection Act – Personal data (as defined in the Data Protection Act 1998, or any amendment or re-enactment thereof) in respect of a Customer which is obtained consequent to this Agreement will be held on AdaptiveComms computer system, and may be used by AdaptiveComms for the purposes of assessing the level of credit which should be extended to the Customer. The information may also be used for the future marketing of related products and services of AdaptiveComms or any of its associated companies unless the subject of the personal data gives AdaptiveComms notice in writing to the contrary.
- (j) Intellectual Property Rights – The parties agree that any confidential know-how, copyrights, patents, trade secrets, inventions, trade-marks and trade names and design rights used by AdaptiveComms in performing its obligations under this Agreement or arising in the course of performing its obligations hereunder are, and will remain, the property of AdaptiveComms (or the third party who has granted

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AdaptiveComms the right to use it) and nothing in this Agreement or AdaptiveComms performance of it will be deemed to pass or transfer to the Customer any such intellectual property rights of AdaptiveComms or any third party.

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## 10. PAYMENT TERMS

Payment of the Annual Maintenance Charge is due before the period of cover commences, unless a monthly payment plan has been agreed with AdaptiveComms, in which case the monthly payment together with any applicable VAT or other tax will be taken by Direct Debit – payable to 21st Century Network Solutions Ltd. Should valid Direct Debit Details not be agreed and supplied by the notified collection dates, AdaptiveComms reserve the right to charge an administration fee of up to £50 per month. Payment for the maintenance of any additional equipment or for chargeable work is due by return following receipt of invoice. Failure to pay any outstanding invoices that are due may result in maintenance being suspended. Suspension may remain in place until payment is received and the customer shall still be liable for all monthly payments due during the entire period of suspended service. Suspension does not affect the accrued rights of AdaptiveComms.