

Terms and Conditions relating to Maintenance and Additional Services (“Contract”)

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Carrier: the relevant third party telecommunications operator or network service provider.
Charges: the applicable charges payable by the Service Customer for the supply of any Services and/or Product in accordance with clause 10.

Commencement Date: means the date on which ACSL shall start to provide the Service which shall mean in the case of:

- Maintenance Services the Installation Date or where ACSL has not contracted with the client to install Product in connection with the Maintenance Services the date specified as the Commencement Date for the Maintenance Services;
- Fixed Network Services the Handover Date in respect of those Fixed Network Services;
- Data Services the relevant Handover Date in respect of those Data Services;
- IT Support Services the date specified as the Commencement Date in the Services Order Form; and
- Mobile Services the Handover Date in respect of those Mobile Services.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Connection Date: means in the case of the provision of Data Services the date when the Carrier commences the provisioning of Data Services to the Service Customer on behalf of ACSL.

Contract: the contract between ACSL and the Service Customer for the supply of any Services and/or goods in accordance with these Conditions, the Services Order Form and any Service Specific Conditions.

Contract Date: the date on which a Contract between the Service Customer and ACSL is formed and comes into existence as determined pursuant to the provisions of clause 2.2.

Data Services: the data services to be provided by ACSL to the Service Customer as described in the Services Order Form, together with such other data services that ACSL agrees to supply to the Service Customer from time to time.

Data Services Contract: where applicable, the Contract for the supply of Data Services.

Delivery: has the meaning given to it in clause 4.2.

Estimated Installation Date: the date on which ACSL estimates that the Product will be installed, as advised by ACSL to the Service Customer.

Extended Term: in relation to:

- a Contract for the supply of Fixed Network Services has the meaning given to it in clause 5.3 or if applicable, clause 5.4;
- a Contract for the supply of Data Services has the meaning given to it in clause 6.3 or if applicable, clause 6.4;
- a Contract for the supply of Maintenance Services has the meaning given to it in clause 4.4, or if applicable, clause 4.5; and
- a Contract for the supply of the IT Support Services has the meaning given to it in clause 7.3 or if applicable, clause 7.4.

Fixed Network Services: the voice services to be provided by ACSL to the Service Customer as specified in the Services Order Form.

Fixed Network Services Contract: where applicable, the Contract for the supply of Fixed Network Services.

ACSL: Adaptive Communication Solutions Limited t/a AdaptiveComms registered in England and Wales with company number 04677602 of 11b Houghton Street, Southport, Merseyside, PR9 9NS

ACSL Service Customer Transfer Preference Policy: as set out at <https://adaptivecomms.co.uk/policies/> as varied from time to time.

Handover Date: means:

- in the case of the provision of Fixed Network Services the date when the Fixed Network Services are available for use by the Service Customer with ACSL as the supplier of the Fixed Network Services;
- in the case of Data Services the date when the Data Services are available for use by the Service Customer with ACSL as the supplier of the Data Services;
- in the case of Mobile Services the date when the Mobile Services are available for use by the Service Customer with ACSL as the supplier of the Mobile Services.

Hosted Sub Licence: a sub licence granted by ACSL to the Service Customer for a hosted product for use in connection with Fixed Network Services.

Installation Date: the date on which the Product is installed.

Installation Services: the services relating to the installation by ACSL (or its duly authorised agents) of the Product (where applicable).

IT Support Services: the IT support services to be provided by ACSL to the Service Customer as specified in the Services Order Form.

IT Support Services Contract: where applicable, the Contract for the supply of IT Support Services.

Maintenance Services: the maintenance services to be provided by ACSL to the Service Customer as described in the Services Order Form, together with such other maintenance services that ACSL agrees to supply to the Service Customer from time to time.

Maintenance Services Contract: where applicable, the Contract for the supply of Maintenance Services.

Minimum Term: the minimum contract term that applies to the Maintenance Services, the Fixed Network Services, the Data Services, the IT Support Services and/or the Mobile Services as the case may be shall unless a different minimum term is specified for any such Service in the Additional Information/Tariff Details section (if applicable) of the Services Order Form be for the period of five years commencing on the Commencement Date.

Mobile Services: the mobile services to be provided by ACSL to the Service Customer as specified in the Services Order Form.

Mobile Services Contract: where applicable, the Contract for the supply of Mobile Services.

Notes Section: the section of the Services Order Form marked “Notes Section”.

Product: the Product as set out in the Services Order Form.

OFCOM: the Office of Communications or any equivalent successor body.

Order: the Service Customer's order for Services as set out in the Services Order Form; such Order being subject to these Terms and Conditions relating to maintenance and additional services.

Service Customer: the person or firm specified as such in the Services Order Form who contracts to purchase Services from ACSL.

Service Customer Default: has the meaning given to it in clause 9.3.

Services Order Form: the document which sets out amongst other things the Services which the Service Customer would like ACSL to provide to it and certain details in respect thereof including when read in conjunction with this Contract the basis on which the charges for providing the Services will be calculated. The Services Order Form shall be prepared by ACSL and sent to the Service Customer for signature by it or on behalf of the Service Customer and returned to ACSL. The Services Order Form may be prepared, sent, signed or returned either electronically or physically.

Service or Services: the services to be supplied by ACSL to the Service Customer, as itemised in the Services Order Form, being any or all of the Installation Services, Maintenance Services, Fixed Network Services, Data Services, IT Support Services and/or Mobile Services, as the case may be, and **Service** shall be construed accordingly but shall exclude the provision of DNS servers and mail servers.

Service Specific Conditions: any policies, terms or procedures that apply to and shall be incorporated into this Contract, as specified in the notes section of the Services Order Form.

Site: the Service Customer's place of business as specified in the Services Order Form where any Services are to be provided or carried out and/or (where applicable) Product is to be delivered and any Installation is to take place, as specified in the Services Order Form.

Small Business Service Customer: a Service Customer identified on the Services Order Form as not being a communications provider and who has 10 or fewer individuals working for that Service Customer (whether as employees, volunteers or otherwise).

Specification: the description or specification of the relevant Services and/or Product provided in writing by ACSL to the Service Customer as set out in the Services Order Form.

Tariff: the standard tariff as set out at <https://adaptivecomms.co.uk/pricing/> and as varied in the Notes Section of the Services Order Form for Fixed Network Services, Data Services and the IT Support Services as attached to the Services Order Form and as amended or notified to the Service Customer from time to time.

VOIP: Voice Over Internet Protocol being the use of the internet as the transmission medium for telephone calls by digital means (rather than the traditional telephone system based on copper wires carrying analogue data).

1.2 Construction. In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes e-mails but excludes faxes.

2. BASIS OF CONTRACT

2.1 The sending of the Services Order Form by ACSL to the Service Customer constitutes an offer by ACSL to the Service Customer to provide services and/or Product in accordance with these conditions, the Order and any service specific conditions (“the Offer”). The Offer may be withdrawn at any point by ACSL prior to it being accepted by the Service Customer.

2.2 The offer shall be accepted and the Contract shall be formed and come into existence at the point when ACSL receives the Services Order Form, either electronically or physically, duly signed (either electronically or physically) by or on behalf of the Service Customer at which point and on which date the Contract shall come into existence (subject where applicable to clauses 4.1, 5.6, 6.8 and 7.5). If ACSL has not received the Services Order Form duly signed for or on behalf of the Service Customer within [12 months] from the date on which it is sent to by ACSL to the Service Customer the offer to contract with the Service Customer shall be deemed to have been withdrawn unless otherwise agreed between ACSL and the Service Customer.

2.3 This Contract constitutes the entire agreement between the parties. The Service Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of ACSL which is not set out in the Services Order Form, the Service Specific Conditions or the terms (or incorporated by reference in any of them). For the avoidance of doubt this Contract, with the exception of collecting money due to ACSL as agent via a third party (if applicable), is independent and separate to the Terms and Conditions of the Hire Agreement relating to the hire of equipment (if any).

2.4 Any samples, drawings, descriptive matter or advertising issued by ACSL, and any descriptions or illustrations contained in ACSL catalogues or brochures, are issued or published for the sole purpose of giving an approximate

idea of the services described in them. They shall not form part of the Contract nor have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Service Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions shall prevail. In the event of any conflict between these Conditions, any Service Specific Conditions and the Services Order Form, the Services Order Form will prevail in relation to that Service.

2.6 Any quotation given by ACSL shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 The Service Customer warrants to ACSL that it is entering into the Contract for the purpose of its business, trade or profession and not as a consumer.

2.8 Except for Installation Services that shall form part of a Contract for the supply of Product, each order for Maintenance Services, Data Services or Fixed Network Services shall be deemed to be a separate Contract (irrespective of whether more than one or all of them are included on the same Services Order Form).

2.9 To the extent that there is any failure or delay by ACSL to supply one of the Services, that shall not entitle the Service Customer to terminate the Contract for the supply of any other Service or Services as the case may be (if any)

3. SUPPLY OF SERVICES

ACSL shall supply the Services to the Service Customer in accordance with the Contract in all material respects. In the event that the Services Order Form specifies:

- the supply by ACSL to the Service Customer of Product and Installation Services and/or Maintenance Services, clause 4 of these Conditions shall also apply to the Contract;
- the supply by ACSL to the Service Customer of Fixed Network Services, clause 5 of these Conditions shall also apply to the Contract;
- the supply by ACSL to the Service Customer of Data Services, clause 6 of these Conditions shall also apply to the Contract; and
- the supply by ACSL to the Service Customer of IT Support Services, clause 7 of these Conditions shall also apply to the Contract.

3.2 ACSL shall use all reasonable endeavours to deliver any Services on or by any date or dates specified in the Services Order Form, but any such dates shall be estimates or for guidance only and time shall not be of the essence for the performance of the Services.

3.3 ACSL shall have the right to make any changes to any Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the relevant Services. ACSL shall notify the Service Customer of any such change.

3.4 ACSL warrants to the Service Customer that the relevant Services will be provided using reasonable care and skill, subject to clauses 4, 5, 6 and 7 of these Conditions.

4. TERMS APPLICABLE TO PRODUCT, INSTALLATION SERVICES AND MAINTENANCE SERVICES

4.1 Any Order for Product is conditional on the availability of such Product prior to the Estimated Installation Date. ACSL shall use reasonable endeavours to deliver the Product and supply the Installation Services with reasonable care and skill in accordance with the estimated period for delivery and installation. Installation within such period is not guaranteed and time shall not be of the essence.

4.2 Delivery of Product shall be deemed to take place when the relevant Product arrives at the Service Customer's Site (prior to unloading or unpacking) as specified in the Services Order Form (Delivery) (and Delivered shall be construed accordingly). In relation to Delivery of any Product:

(a) the Service Customer shall be responsible for checking that all details specified in the Services Order Form are correct;

(b) if the Service Customer fails to take Delivery of any Product within 10 Business Days of ACSL notifying the Service Customer that the Product is capable of being delivered, the Product shall be deemed to have been Delivered in accordance with the Contract and the Product shall be at the risk of the Service Customer and thereafter clause shall apply to the Product;

(c) if any Product is to be Delivered in instalments, any delay in the Delivery of one instalment shall not entitle the Service Customer to reject the other instalments or to terminate the Contract; and

(d) the risk in any Product shall pass to the Service Customer on Delivery (or deemed Delivery in accordance with clause 4.2(b)) and the Service Customer shall be responsible for insuring the Product from that time.

4.3 If the Service Customer is in breach of the Contract the Service Customer shall return the Product at the Service Customer's cost to ACSL immediately on request and permit ACSL or its agents to enter any premises of the Service Customer or of any third party where the Product is located in Services Order Form to recover it.

4.4 Subject to clause 2.2, the Maintenance Services shall automatically extend for a minimum term of 12 months (Extended Term) at the end of the Minimum Term. A party may give notice in writing to the other party no later than ninety days before the end of the Minimum Term or 30 days after to terminate the Maintenance Services, such notice to expire no earlier than the end of the Minimum Term.

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4.6 The Maintenance Services shall only be supplied by ACSL in relation to the Product and to any other Product agreed by ACSL in writing from time to time. Unless agreed otherwise in writing by ACSL, ACSL shall supply the Maintenance Services in accordance with the Maintenance Service Levels (a copy of which is available at <https://adaptivecomms.co.uk/service-level-agreement/>) as amended from time to time.

4.7 The Maintenance Services shall not include or be deemed to include repair or maintenance to:

(a) Product that is faulty or has failed due (in whole or in part) to or caused by:

(i) fair wear and tear;

(ii) the Service Customer's (including its agents or workers) acts, operating errors, omissions or default;

(iii) failure in air-conditioning or fluctuations in electrical power;

(iv) any failure of Product or software attached to or integrated to the Product where such Product or software was not supplied by ACSL;

(v) vandalism, fire, theft, water or lightning;

(vi) any defect or error in software loaded on to the Product;

(vii) any defect or fault in connection with services supplied to ACSL by any Carrier;

(viii) failure by the Service Customer (including its agents or workers) to adequately maintain any Product or operate it in accordance with the manufacturer's specifications, guidelines or recommendations; or

(ix) any attempt by the Service Customer or any third party other than ACSL or its duly authorised agents to repair, reconfigure, re-program or otherwise alter the Product or any Product or cabling attached to it;

(b) ancillary items, including but not limited to, answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;

(c) the maintenance or repair of any extension wiring, any Product not at the Site, or of anything other than the Product; or

(d) the reprogramming of the Product to provide improved or modified services or facilities.

4.8 In the event that ACSL carries out Maintenance Services to any Product which has, in its reasonable opinion failed or become faulty due (wholly or partially) to any of the circumstances described in clause 4.7, ACSL shall be entitled to charge additional fees for such services calculated in accordance with clause 9.5.

4.9 In carrying out the Maintenance Services ACSL shall not (subject to clause 14) be liable for the loss of any data or information stored on the Product or any other Product that may be affected by the carrying out of the Maintenance Services and the Service Customer shall ensure that appropriate backups of all data and information are maintained.

4.10 In rectifying any fault to Product it may be necessary for ACSL to reset the Product's software. In such cases, ACSL shall not be responsible for resetting or reloading Product programming and userprofiles.

4.11 The Maintenance Services are limited to the provision and repair of the Product by ACSL on a like for like basis, which may include ACSL supplying reconditioned parts for Product and reconditioned Product. Any Product that is removed or replaced and any parts that are removed or installed in Product in the carrying out of the Maintenance Services shall become or shall remain (as the case may be) the property of ACSL.

4.12 Subject to clause 14, ACSL shall not be liable for any delay in the performance of the Maintenance Services where such delay is attributable to no or poor or delayed availability of spare parts for any item of Product.

4.13 If the Service Customer terminates a Contract (in whole or in part) for Maintenance Services before the end of any applicable Minimum Term or Extended Term, the Service Customer shall pay to ACSL all charges that would have accrued during the period from the expiry of the Service Customer's notice to terminate (or where no notice is given the date of indication by the Service Customer of an intention to no longer be bound by the Contract (in whole or in part)) to the end of the Minimum Term or Extended Term (as the case may be).

5. TERMS APPLICABLE TO FIXED NETWORK SERVICES

5.1 Subject to clause 2.2 and clause 5.5, the supply of the Fixed Network Services shall commence on the Commencement Date and shall continue for the Minimum Term.

5.2 If the Commencement Date for the provision of Fixed Network Services has not occurred prior to the first anniversary of the Contract Date for the Fixed Network Services then the Contract in respect thereof shall be deemed to have terminated unless otherwise agreed between ACSL and the Service Customer. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.

5.3 Subject to clause 5.5, the Fixed Network Services shall automatically extend for a minimum term of thirty days (Extended Term) at the end of the Minimum Term. A party may give notice in writing to the other party no later than ninety days before the end of the Minimum Term or 30 days after to terminate the Fixed Network Services, such notice to expire no earlier than the end of the Minimum Term.

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5.5 Where the Service Customer is a Small Business Service Customer, the Service Customer may terminate the Fixed Network Services Contract by giving not less than 30 days notice in writing to ACSL, such notice to expire no earlier than the end of the Minimum Term.

5.6 The provision of any Fixed Network Services by ACSL under a Fixed Network Services Contract is conditional on:

(a) ACSL carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the Fixed Network Services;

(b) the installation of the lines over which the Fixed Network Services are to be provided and such lines being fully operational; and

(c) the Service Customer providing to ACSL to its satisfaction accurate information and data to enable ACSL to calculate the Charges and to carry out a site survey.

5.7 ACSL warrants to the Service Customer that Fixed Network Services will be provided using reasonable care and skill. The Service Customer agrees that ACSL cannot guarantee that the Fixed Network Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Fixed Network Services must be notified to ACSL in accordance with clause 5.8.

5.8 The Service Customer shall notify ACSL of any interruption, fault or error with the Fixed Network Services in accordance with ACSL Fault Handling Policy (available at <https://adaptivecomms.co.uk/policies/>) as amended from time to time.

- ACSL shall use reasonable endeavours to correct or cure any interruption, fault or error with the Fixed Network Services in accordance with ACSL' Fault Handling Policy, save that time shall not be of the essence.
- 5.9 Notwithstanding any other provision of these Conditions, ACSL shall not be liable to the Service Customer in contract, tort (including negligence) or otherwise for any acts or omissions of Carriers that may (wholly or partially) cause, impact or result in any interruption, fault or error with or withdrawal (temporarily or permanently) of the Fixed Network Services.
- 5.10 All and any telephone numbers allocated to the Service Customer in connection with the Fixed Network Services may be withdrawn by OFCOM and accordingly ACSL does not warrant or represent that such telephone numbers can be provided to the Service Customer. The Service Customer acknowledges and agrees that any telephone numbers allocated to it are allocated on the basis of a licence and the Service Customer agrees not to sell or transfer any telephone number provided to it (except where the Service Customer has a right to port that telephone number).
- 5.11 In relation to the use of the Fixed Network Services the Service Customer agrees:
- to ensure that the Fixed Network Services are not used to make offensive, indecent, menacing, nuisance or hoax calls;
 - not to use the Fixed Network Services in anyway that may, in ACSL' reasonable opinion, damage its reputation;
 - not to contravene any laws, regulations or codes of conduct that may, from time to time, be applicable to the use or supply of the Fixed Network Services;
 - to implement and maintain appropriate security and control over its networks, equipment and business to prevent fraud and to prevent calls being generated by third parties;
 - to maintain adequately all equipment utilised in connection with the Fixed Network Services and ensure its compatibility in terms of technical specification;
 - not to use nor permit the Fixed Network Services to be used in any way that would constitute or contribute to the commission of any crime, tort, fraud or other unlawful activity;
 - not to allow any unauthorised use of the Fixed Network Services and to take all reasonable security measures to prevent such use;
 - not to sell or resell the Fixed Network Services in whole or in part;
 - not to misuse the Fixed Network Services in any way, including without limitation causing the volume of calls made to the telephone numbers allocated to the Service Customer to significantly exceed that which can be answered by the Service Customer where this would cause congestion to a network;
 - that ACSL may publish details of the Service Customer's name, address and telephone number(s) in the Directory Enquiries Service, unless the Service Customer expressly confirms to ACSL in writing that it would like a special entry to be made, for which ACSL may make an additional charge;
 - that to the extent the Fixed Network Services contain VOIP services, clause 6.12 shall also apply save that references in that clause to Data Services shall be deemed to be references to Fixed Network Services; and
 - in order to protect the Service Customer against unauthorised transfer of Fixed Network Services, in the event that the Service Customer fails to contact ACSL not less than 48 hours prior to any transfer date in accordance with ACSL' Service Customer Transfer Preference Policy, ACSL may cancel any order made with a third party supplier.
- 5.12 Any Product installed or supplied by ACSL to the Service Customer in connection with the Fixed Network Services (including but not limited to handsets) shall, except for Products purchased by the Service Customer under clause 4, at all times remain the property of ACSL. The Service Customer shall return such Product to ACSL immediately on request and shall be liable for costs, losses, damages and expenses incurred by ACSL for the repair, recovery and replacement of such Product.
- 5.13 Unless otherwise specified in the Services Order Form, upon termination of the Fixed Network Services Contract (for whatever reason), the Service Customer shall return any handsets installed or supplied by ACSL to the Service Customer in connection with the Fixed Network Services at the Service Customer's cost. If such handsets are not returned within seven days following the termination of the Fixed Network Services Contract, ACSL reserves the right to charge the Service Customer a fee in respect of each handset, as specified in the Tariff.
- 5.14 ACSL shall be entitled to make additional charges in the event that the Service Customer supplies inaccurate or misleading information to ACSL or if the results of any survey reveal additional construction work is required in order for ACSL to supply the relevant Fixed Network Services.
- 5.15 Where the transfer of lines and services of another supplier occurs, then the provision of any and all relevant existing services supplied to the Service Customer by such supplier will automatically transfer to ACSL and will be charged for by ACSL in accordance with the Tariff.
- 5.16 The Service Customer acknowledges and accepts that it is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly stated on the Services Order Form that ACSL will pay for such charges in which case ACSL will pay for such charges but limited to those specifically as set out on the Services Order Form.
- 5.17 The Service Customer accepts and acknowledges that ACSL will prior to the Handover Date have spent a significant amount of time and incurred expense in preparation for the provision of the Fixed Network Services to the Service Customer. In the event that the Service Customer terminates the Contract for Fixed Network Services prior to the Handover Date it shall pay to ACSL £500 plus vat, This clause 5.17 shall not apply where the Service Customer is a Small Business Service Customer. Where the Service Customer is a Small Business Service Customer, the Service Customer may terminate a Contract for Fixed Network Services at any time prior to commencement of the supply of such Services.
- 5.18 The following provisions of this clause 5.18 shall apply in the event that after the Handover Date the Service Customer terminates the Contract for Fixed Network Services in breach of contract prior to the expiry of the Minimum Term or the Extended Terms as the case may be:
- In this clause 5.18 **Remainder of the Term** means (where the Service Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Service Customer had instead terminated it at the earliest following opportunity without being in breach of contract;
 - Save where the Service Customer has contracted for the supply of line rental only, a Service Customer agrees that it shall not on lines contracted to be billed by ACSL use those lines for calls charged for by another supplier. If in breach of this clause the Service Customer does use lines supplied by ACSL for the carriage of calls charged for by another supplier the Service Customer shall be deemed to be in breach of the Contract for the supply of Fixed Network Services and at ACSL' option the Service Customer shall be deemed to have terminated the Contract for Fixed Network Services in breach of contract and the provisions of this clause 5.18 shall apply;
 - If in breach of contract the Service Customer terminates a Contract for Fixed Network Services before the end of the Minimum Term or where applicable the end of an Extended Term (as the case may be), the Service Customer shall be liable to pay to ACSL an amount calculated in the following manner:
 - (by reference to line rental) the sum that it would have paid to ACSL for the rental of the lines for the Remainder of the Term calculated at the rate then applying at the time of termination; plus
 - (by reference to call charges) either the sum of £500 or if greater the average of the monthly charges for calls incurred by the Service Customer for the three whole months prior to the termination of the Contract multiplied by the period of the Remainder of the Term (expressed in months).
- 5.19 The Service Customer agrees not to use in connection with the Fixed Network Service provided by ACSL any telephone number that the Service Customer does not have the legitimate right to use. In this regard the Service Customer shall not "present out" any telephone number that it does not have the right to use; such as a telephone number of a competitor.
- 5.20 Where ACSL grants to the Service Customer a Hosted Sub Licence it shall terminate at the point when ACSL ceases to provide to the Service Customer the Fixed Network Services in respect of which the Hosted Sub Licence was granted and the Hosted Sub Licence and all rights in the Hosted Sub Licence shall revert to and be owned in their entirety by ACSL.
- 6. TERMS APPLICABLE TO DATA SERVICES**
- 6.1 Subject to clause 6.6, the supply of the Data Services shall commence on the Commencement Date and shall continue for the Minimum Term. If stated as such in the Services Order Form.
- 6.2 Subject to the remaining provisions of this clause if the Commencement Date for the provision of Data Services has not occurred prior to the first anniversary of the Contract Date for the Data Services then the Contract in respect thereof shall be deemed to have terminated. ACSL may by giving written notice to the Service Customer extend the period referred to in this clause by six months if the reason why the Commencement Date has not occurred is outside of the control of ACSL. Further, the period may be extended in by such period as ACSL and the Service Customer agree. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.
- 6.3 Subject to clause 6.5 the Data Services shall automatically extend for a minimum term of thirty days (Extended Term) at the end of the Minimum Term. A party may give notice in writing to the other party no later than ninety days before the end of the Minimum Term or 30 days after to terminate the Data Services, such notice to expire no earlier than the end of the Minimum Term.
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- 6.5 Where the Service Customer is a Small Business Service Customer, the Service Customer may terminate the Data Services Contract by giving not less than 30 days notice in writing to ACSL, such notice to expire no earlier than the end of the Minimum Term.
- 6.6 The provision of any Data Services by ACSL under a Data Services Contract is conditional on:
- ACSL carrying out such surveys as it considers necessary to satisfy itself that that it is feasible for it to supply the Data Services and ACSL being satisfied with the results of such surveys;
 - ACSL not being prevented by circumstances and factors outside of its control from being able to supply the Data Services. Examples of such circumstance and factors include (without limit) the infrastructure not being able to support the Data Services, the Service Customer not obtaining the necessary permission from third parties such as a landlord to install the necessary infrastructure, or a public body such as a local authority or highways authority withholding consent to the installation of the infrastructure where such consent is required;
 - the installation of the lines over which the Data Services are to be provided and such lines being fully operational; and
 - the Service Customer providing to ACSL to its satisfaction accurate information and data to enable ACSL to calculate the Charges and to carry out or commission a site survey.
- 6.7 ACSL warrants to the Service Customer that Data Services will be provided using reasonable care and skill. The Service Customer agrees that ACSL cannot guarantee that the Data Services will work without interruption and will be fault or free. Any interruption, fault or error with the Data Services must be notified to ACSL in accordance with clause 6.8.
- 6.8 The Service Customer shall notify ACSL of any interruption, fault or error with the Data Services in accordance with ACSL' Fault Handling Policy (available at <https://adaptivemms.co.uk/policies/>) as amended from time to time. ACSL shall use reasonable endeavours to correct or cure any interruption, fault or error with the Data Services in accordance with ACSL' Fault Handling Policy, save that time shall not be of the essence.
- 6.9 Notwithstanding any other provision of these Conditions, ACSL shall not be liable to the Service Customer in contract, tort (including negligence) or otherwise for any acts or omissions of suppliers that may (wholly or partially) cause, impact or result in any interruption, fault or error with, or withdrawal of (temporarily or permanently), the Data Services.
- 6.10 In relation to the use of the Data Services the Service Customer agrees and where appropriate accepts:
- to comply with the obligations in clauses 5.11(a) to 5.11(i) (inclusive) as if references in those clauses to Fixed Network Services were references to Data Services;
 - not to misuse the Data Services in any way, including sending or receiving data in such a manner or volume so as to exceed agreed usage limits or so as to adversely affect the network, ACSL or its other Service Customers;
 - that the speed of any Data Services or connection depends on a number of factors beyond ACSL' control (including external factors and physical factors) (such as local availability, the distance from the exchange and peak traffic volume) and that ACSL does not warrant or represent that the Service Customer's connection(s) will produce the maximum advertised speed;
 - that except where stated otherwise in the Services Order Form, the Data Services do not include the supply by ACSL of lines, modems and other equipment that might be required by the Service Customer to utilise the Services nor advice on these unless ACSL is specifically engaged to do so under a separate contract which shall be in addition to the provision of Data Services under the Data Services Contract;
 - to comply with ACSL' Fair Use Policy (available at https://adaptivemms.co.uk/wp-content/uploads/2020/08/21CNS_Unlimited_Fair_Use_Policy.pdf) as amended from time to time;
 - to provide suitable space and environment at the Site for the equipment or Product (if applicable) used in the provision of the Data Services (such as sufficient cooled space on a rack) and to do so in a timely manner. Compliance by the Service Customer with this clause shall be entirely at the Service Customer's cost;
 - In respect of any router supplied by or on behalf of ACSL for a managed internet Ethernet circuit unless otherwise specifically agreed with ACSL:-
 - the router will be provided in a routed IP configuration and its sole purpose is to create an interface for the Service Customer to plug equipment into and it is not to be used for any other purpose;
 - the router is the demarcation point at which the responsibility for the provision of Data Services by ACSL ends;
 - access to the command interface of the router (which would be required to configure the router) will not be provided to the Service Customer, nor will other functions that the router may be capable of be enabled such as wireless connectivity and firewall functionality;
 - ACSL is not responsible for configuration of the router other than to an IP configuration; and
 - ACSL shall not be responsible for installing firewalls or plugging in the router and if the Service Customer requires firewalls the Service Customer shall be responsible for processing their installation.
 - In respect of a router supplied by or on behalf of ACSL for an internet broadband service it will be provided in a NAT (Network Address Translation) configuration with DHCP Scope enabled unless otherwise agreed.
- 6.11 ACSL is under a duty to all of its Service Customers to preserve network integrity and capacity and avoid degradation. The Service Customer agrees that:
- if in ACSL' reasonable opinion the Service Customer's use of Data Services is adversely affecting, or may adversely affect, integrity and capacity of networks, ACSL may take such steps as it deems appropriate to manage the Service Customer's Data Services;
 - ACSL and/or the Carrier may take such steps as it deems necessary to stop emails that appear to be bulk emails or which appear to be of an unsolicited nature from entering networks on this may including blocking access to or delivery of any such emails; and
 - ACSL and/or the Carrier may operate virus screen technology which may result in the deletion or alteration of emails or their attachments.
- 6.12 Where the Data Services involve the supply of VOIP services, then it is agreed that the following shall apply and the Service Customer accepts that:
- the Service Customer's ability to make emergency calls and their priority treatment cannot be guaranteed and that any suspension or interruption of the VOIP service may result in the Service Customer being unable to make emergency calls;
 - the VOIP services are generally not considered to be as reliable as calls made over conventional telephone lines and Service Customers are advised to maintain the ability to make telephone calls other than as through a VOIP system, such as by maintaining a conventional telephone line;
 - the Service Customer acknowledges that the VOIP service may sometimes be limited, unavailable or interrupted due to events beyond ACSL' control, such as those specified in clause 17.1 (force majeure); and
 - the VOIP services may not offer all of the features or resilience that the Service Customer may expect from a conventional telephone line.
- 6.13 Unless otherwise specified in the Services Order Form, other than Product purchased by the Service Customer, any equipment or Product (if applicable) installed or supplied by ACSL to the Service Customer in connection with the Data Services (including but not limited to routers) shall at all times remain the property of ACSL. The Service Customer shall return such equipment or Product (if applicable) to ACSL immediately on request or cessation of the provision of Data Services and the Service Customer shall be liable for all costs, losses, damages and expenses incurred by ACSL for the repair, recovery and replacement of such equipment or Product (if applicable).
- 6.14 Unless otherwise specified in the Services Order Form, upon termination of the Data Services Contract (for whatever reason), the Service Customer shall return any routers installed or supplied by ACSL to the Service Customer in connection with the Data Services at the Service Customer's cost. If such routers are not returned within seven days following the termination of the Data Services Contract, ACSL reserves the right to charge the Service Customer a fee in respect of each router, as specified in the Tariff.
- 6.15 Where the Service Customer wishes to transfer the provision of any lines or services from another supplier to ACSL, the Service Customer shall:
- provide to ACSL such accurate information as is required by ACSL to enable the migration from the current supplier; and
 - be responsible for all costs, charges and penalties that may arise as a result of or in connection with such transfer.
- 6.16 The Service Customer acknowledges and accepts that it is liable for all cancellation or termination payments and charges (including without limitation any early termination charges) levied by a previous supplier for the transfer of the provision of services and lines to ACSL unless it is stated on the Services Order Form that ACSL will be responsible for the payment of such Charges.
- 6.17 The Service Customer accepts and acknowledges that ACSL will prior to the Connection Date have spent a significant amount of time and incurred expense in preparation for the provision of the Data Services to the Service Customer. In the event that the Service Customer terminates the Contract prior to the Connection Date it shall pay to ACSL:
- £500 plus vat in respect of the time spent by ACSL in preparation for the provision of the Data Services to the Service Customer; and
 - an amount equal to the direct expenses (plus vat) incurred by ACSL to its supplier(s) in the preparation of Data Services to the Service Customer limited to £2,000. This clause 6.17 shall not apply where the Service Customer is a Small Business Service Customer.
- 6.18 Where the Service Customer is a Small Business Service Customer, the Service Customer may terminate a Contract for Data Services at any time prior to commencement of the supply of such Data Services.
- 6.19 The following provisions of this clause 6.19 shall apply in the event that after the Connection Date the Service Customer terminates the Contract for Data Services in breach of contract prior to the expiry of the Minimum Term or the Extended Terms as the case may be:
- In this clause 6.19 **Remainder of the Term** means (where the Service Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Service Customer had instead terminated it at the earliest following opportunity without being in breach of contract. Where the Service Customer terminates the Contract for Data Services in breach of contract after the Connection Date but before the Handover Date then the Remainder of the Term shall be deemed to have commenced on the Connection Date;
 - The Service Customer acknowledges and accepts that to enable ACSL to provide the Data Services to the Service Customer, ACSL will enter into a contract for a fixed term with its supplier at the Connection Date. As is common with such contracts ACSL may remain liable to its supplier whether or not the Contract for Data Services with the Service Customer terminates prior to the end of the Minimum Term or the Extended Term as the case may be;
 - In the event that the Service Customer is in breach of contract by terminating the Contract for Data Services otherwise than in accordance with clause 6.3 or 6.4 if applicable (and/ or 6.5 where the Service Customer is a Small Business Service Customer) before the end of the Minimum Term or where applicable the end of an Extended Term (as the case may be) the Service Customer shall pay to ACSL (subject to the provisions of clause (d)) as liquidated damages an amount equal to the sum that the Service Customer would have been liable to pay to ACSL for the Remainder of the Term for the Data Services (calculated at the rate which applied at the time of termination) less any reduction that may apply pursuant to the provisions of clause 6.19(d) below. Where such termination occurs after the Connection Date but before the Commencement Date then the rate shall be the rate that would have applied at the Commencement Date had the Contract not been terminated; and
 - If the provisions of clause 6.19(c) apply and in the event that a supplier used by ACSL to provide the Data Services to the Service Customer reduces the amount that it charges to ACSL from that which it is contractually entitled to charge in respect of the Remainder of the Term ACSL shall advise the Service Customer of the amount of the reduction and that reduction shall be deducted from the amount payable under clause 6.19(c).
- 7. TERMS APPLICABLE TO IT SUPPORT SERVICES**
- 7.1 For the purpose of the IT Support Services, the following terms shall have the following meanings:
Service Level Agreement: the service levels for the provision of IT Support Services as set out at <https://adaptivemms.co.uk/service-level-agreement/> as varied from time to time;
System: the hardware, operating systems and software listed in the Services Order Form;
Support Hours: the hours listed on the Services Order Form;
Out of Hours: such hours and times that not within the Support Hours; and
Support Request: includes the following: a request submitted by the Service Customer via telephone or email for support by ACSL under the IT Support Services; and automated messages for support generated by the System and sent directly to ACSL for attention.
- 7.2 Subject to clause 2.2, the supply of the IT Support Services shall commence on the Commencement Date and continue for the Minimum Term.
- 7.3 The IT Support Services Contract shall automatically extend for a minimum term of ninety days (Extended Term) at the end of the Minimum Term. A party may give notice in writing to the other party no later than 30 days before the end of the Minimum Term or ninety days after to terminate the IT Support Services Contract, such notice to expire no earlier than the end of the Minimum Term.
- 7.4 BLANK
- 7.5 The provision of any IT Support Services by ACSL under an IT Support Services Contract is conditional on:
- ACSL carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the IT Support Services; and
 - the Service Customer providing to ACSL to its satisfaction accurate information and data to enable ACSL to provide IT Support Services.
- 7.6 Subject to the Service Customer's payment of the Charges, ACSL will provide the IT Support Services to the Service Customer during Support Hours, unless support during Out of Hours is requested by the Service Customer and this is

- agreed to be provided by ACSL;
- (b) meeting or exceeding the service levels referred to in the Service Level Agreement; and
- (c) remotely, unless otherwise agreed between ACSL and the Service Customer.
- 7.7 In relation to the use of the IT Support Services the Service Customer agrees:
- (a) that the IT Support Services shall be provided by ACSL remotely, unless otherwise agreed;
- (b) to permit ACSL remote access to its System and inform ACSL of any changes to passwords or other security devices to enable ACSL to access the System;
- (c) to keep back-up copies of its operating systems and software;
- (d) to keep back-up copies of its data in line with recommendations made by the relevant software providers or ACSL from time to time;
- (e) to make available such personnel of the Service Customer with appropriate skills, knowledge and authority to assist ACSL in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults; and
- (f) to promptly check that files have been restored from back-up when restoration from back-up has been tested.
- 7.8 ACSL shall prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported and use its reasonable endeavours to respond to all Support Requests with a break fix in accordance with the response times set out in the Service Level Agreement.
- 7.9 ACSL will seek to acknowledge all Support Requests within one working office hour of being logged.
- 7.10 The Service Customer acknowledges and agrees that:
- (a) in the event that a fault in the System is caused by an error or defect in the operating system or software, the sole responsibility of ACSL will be to notify the Service Customer of the issue and to devise (where possible) a workaround for the Service Customer;
- (b) the sole responsibility of ACSL in respect of any hardware issues shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty; and
- (c) ACSL will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt backups of data or back-up procedures.
- 7.11 In the event that the Service Customer requests and ACSL provides IT Support Services in excess of the Service Customer's allocated allowance, ACSL shall be entitled to charge additional fees for such services in accordance with clause 10.10.
- 7.12 ACSL shall, at the request and cost of the Service Customer, provide the Service Customer with a report summarising the Support Requests received, the time of receipt, the time of response and the time the Support Request is cleared. Any such request must be made in writing to ACSL and the Service Customer acknowledges and agrees that reports can only be provided by ACSL in respect of the month or months following the receipt of the request.
- 7.13 ACSL warrants to the Service Customer that the IT Support Services will be rendered by personnel with appropriate skills and experience to provide the IT Support Services. The Service Customer agrees that ACSL cannot guarantee that the provision of the IT Support Services will cause the System to work without interruption or error. The warranties provided by ACSL in clause 3.4 and this clause 7.13 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the IT Support Services.
- 7.14 The Service Customer warrants to ACSL that it owns or has the benefit of a valid and subsisting licence to use every element of the System and it has full authority to permit ACSL to perform the IT Support Services hereunder.
- 7.15 The Service Customer will fully indemnify and hold harmless ACSL against all costs, expenses, liabilities, losses, damages and judgments that ACSL may incur or be subject to as a result of a breach of clause 7.14.
- 8. TERMS APPLICABLE TO MOBILE SERVICES**
- 8.1 For the purpose of the Mobile Services, the following terms shall have the following meanings:
- Airtime Provider:** the relevant mobile network operator or wireless communications service provider;
- Connection:** connection to any Airtime Provider's network;
- Hardware Fund:** the fund allocated to the Service Customer to allow it to purchase Product in connection with the Mobile Services;
- Retail Mobile Services:** the mobile services to be provided by ACSL to the Service Customer, where the Service Customer is directly contracted with an Airtime Provider;
- Support Hours:** 9 am to 5.30 pm (GMT); and
- Wholesale Mobile Services:** the mobile services to be provided by ACSL to the Service Customer, where the Service Customer is directly contracted with ACSL and not an Airtime Provider.
- 8.2 Subject to clause 2.2, the supply of the Mobile Services shall commence:
- (a) In the case of Wholesale Mobile Services on the Commencement Date and continue for the Minimum Term; or
- (b) In the case of Retail Mobile Services on the date the contract between the Service Customer and the Airtime Provider is signed by the Service Customer and continue until it expires, is terminated by the Airtime Provider, or the Service Customer is otherwise released from the contract by the Airtime Provider.
- 8.3 In the case of Wholesale Mobile Services, the Mobile Services Contract shall automatically extend for a minimum term of thirty days (Extended Term) at the end of the Minimum Term. A party may give notice in writing to the other party no later than ninety days before the end of the Minimum Term or 30 days after to terminate the Mobile Services Contract, such notice to expire no earlier than the end of the Minimum Term.
- 8.4 BLANK
- 8.5 The provision of any Mobile Services by ACSL under a Mobile Services Contract is conditional on:
- (a) the Service Customer providing to ACSL to its satisfaction accurate information and data to enable ACSL to provide Mobile Services;
- (b) Network coverage; and
- (c) Availability of Product.
- 8.6 Subject to the Service Customer's payment of the Charges, ACSL will provide support for the Mobile Services to the Service Customer as follows:
- (a) In the case of Wholesale Mobile Services, remote support during Support Hours, unless otherwise agreed between ACSL and the Service Customer with on-site support being chargeable; or
- (b) In the case of Retail Mobile Services, limited support during Support Hours in accordance with the Airtime Provider's terms.
- 8.7 ACSL shall operate and maintain a telephone helpdesk to receive and process any requests for support in respect of the Mobile Services.
- 8.8 In relation to the use of the Mobile Services the Service Customer agrees:
- (a) that any support for the Mobile Services shall be provided by ACSL remotely, unless otherwise agreed;
- (b) to keep their data backed-up and ensure that software updates are maintained; and
- (c) to make available such personnel of the Service Customer with appropriate skills, knowledge and authority to assist ACSL in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults.
- 8.9 The Service Customer acknowledges and agrees that:
- (a) ACSL bears no responsibility for and will not be liable for any loss suffered by the Service Customer as a result of any fault that is caused by an error or defect in the network or software;
- (b) the sole responsibility of ACSL in respect of any issues with hardware supplied under or in connection with the Mobile Services shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty;
- (c) ACSL will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt backups of data or back-up procedures, network outages, or errors, failures or defects in the operating system; and
- (d) in recognition of the fact that ACSL may be entitled to receive payments from the Airtime Provider as a result of the Service Customer taking up the Mobile Services, the Service Customer will remain liable to ACSL and shall not avoid liability to ACSL if the Airtime Provider releases the Service Customer from its contract for any reason, including (without limitation) the Service Customer is released due to an error on the part of the Airtime Provider where the Service Customer has signed for 2 years.
- 8.10 ACSL warrants to the Service Customer that the Mobile Services will be rendered by personnel with appropriate skills and experience to provide the Mobile Services. The Service Customer agrees that ACSL cannot guarantee that the Mobile Services will work without interruption or error. Any interruption, fault or error must be notified to ACSL using the telephone helpdesk referred to in clause 8.7. The warranties provided by ACSL in clause 3.4 and this clause 8.10 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the Mobile Services.
- 8.11 The Service Customer warrants to ACSL that, where ACSL provides the Mobile Services and the Service Customer uses equipment it owns or has the benefit of using, the Service Customer either owns such equipment or has a valid right to use it, and the Service Customer further warrants that it is the Service Customer's responsibility to ensure any such equipment works and is suitable as is for the Service Customer to receive and/or use the Mobile Services. By way of example and without limitation, the Service Customer must check and ensure that any SIM it proposes to use is unlocked and this shall not be the responsibility of ACSL.
- 8.12 Notwithstanding any other provision of these Conditions, ACSL shall not be liable to the Service Customer in contract, tort (including negligence) or otherwise for any acts or omissions of the Airtime Provider that may (wholly or partially) cause, impact or result in any interruption, fault error or withdrawal of (temporarily or permanently) the Mobile Services.
- 8.13 The Service Customer will fully indemnify and hold harmless ACSL against all costs, expenses, liabilities, losses, damages and judgments that ACSL may incur or be subject to as a result of a breach of clause 8.11.
- 8.14 Unless otherwise specified in the Services Order Form, any Product supplied or installed by ACSL to the Service Customer in connection with the Mobile Services (including but not limited to SIMs and handsets) shall, except for Product purchased by the Service Customer under clause 4 which shall not include handsets obtained by the Service Customer as a result of being subsidised by ACSL, at all times remain the property of ACSL. The Service Customer shall return such Product (if applicable) to ACSL immediately on request and shall be liable for costs, losses, damages and expenses incurred by ACSL for the repair, recovery and replacement of such equipment or Product (if applicable).
- 8.15 Unless otherwise specified in the Services Order Form, upon termination of the Mobile Services Contract (for whatever reason), the Service Customer shall return any handsets and SIMs installed or supplied by ACSL to the Service Customer in connection with the Fixed Network Services at the Service Customer's cost. If such handsets and SIMs are not returned within seven (7) days following the termination of the Mobile Services Contract, ACSL reserves the right to charge the Service Customer a fee in respect of each handset, such fee being the full market value of the handset(s) at the time of being supplied to the Service Customer.
- 8.16 In relation to any Product that is supplied or installed by ACSL to the Service Customer in connection with the Mobile Services hereunder, except for Product purchased by the Service Customer under clause 4, the following shall apply:
- (a) The Service Customer shall notify ACSL in writing within three (3) Business Days of receipt if the any of the Product is damaged, or if the order has been incorrectly fulfilled;
- (b) ACSL is not obliged to offer the Service Customer a refund, exchange or credit to the Hardware Fund in the event that Product is ordered by the Service Customer in error;
- (c) ACSL is not obliged to agree to any upgrades to the Product it supplies to the Service Customer at any time, including during or after the Minimum Term (if applicable) but if it does, ACSL shall be entitled to extend the
- Minimum Term; and
- (d) The Supply of Product by ACSL to the Service Customer shall be subject to availability.
- 8.17 Any Hardware Fund and any Product supplied that has been charged to a Hardware Fund, are supplied by ACSL in return that the Service Customer completes the Minimum Term or the minimum period of the corresponding contract with the Airtime Provider, as applicable.
- 8.18 Where the Mobile Services Contract is completed, then full title of any handsets supplied by ACSL shall transfer to the Service Customer, along with the right for the Service Customer to claim any outstanding amounts held by ACSL in the Hardware Fund.
- 8.19 At the end of the Minimum Term or the minimum period of the corresponding contract with the Airtime Provider, as applicable, should the Service Customer's Hardware Fund be in a negative position then the Service Customer acknowledges and agrees to ACSL invoicing the balance of the negative amount, and to pay that amount in line with ACSL's standard payment terms.
- 8.20 Where the Service Customer terminates any Connection prior to the expiry of that Connection's minimum period, the Service Customer shall pay to ACSL a Lump sum termination payment calculated as the total amount of the Hardware Fund initially provided to the Service Customer at the point of connection or renewal, as applicable, minus any unspent amount currently held by ACSL.
- 8.21 Where the Service Customer terminates any Connection prior to the expiry of that Connection's minimum period and the Hardware Fund has been fully utilised by the Service Customer, the Service Customer shall pay to ACSL a Lump sum equal to the Hardware Fund provided for the Connection(s) in question, based on the value of the Hardware Fund provided at the commencement of the current minimum period.
- 8.22 Where the Service Customer terminates any Connection prior to the expiry of that Connection's minimum period and Product has been supplied either free of charge or at a reduced rate, the Service Customer shall pay to ACSL a Lump sum equal to the Product provided for the Connection(s) in question, based on the market value of the Product provided at the commencement of the current minimum period.
- 8.23 The sums stipulated in clauses 8.20, 8.21 and 8.22 will be charged in addition to any contractual early termination fees imposed by either ACSL, or the applicable Airtime Provider in relation to the contract with said Airtime Provider.
- 8.24 You agree that, after any variation(s) to these Terms and Conditions that are not exclusively to your benefit have been notified to you and posted on the ACSL Website, you will be allowed to terminate the relevant service contract within 30 days without penalty, after which you will be bound by the Terms and Conditions as varied.
- 9. SERVICE CUSTOMER'S GENERAL OBLIGATIONS AND TERMS APPLICABLE TO ALL SERVICES**
- 9.1 In relation to the Services, the Service Customer:
- (a) shall ensure that the terms of the Services Order Form and any information it provides in the Specification are complete and accurate;
- (b) shall co-operate with ACSL in all matters relating to the relevant Services;
- (c) shall provide ACSL, its employees, agents, consultants and subcontractors, with access to the Service Customer's premises, office accommodation and other facilities as reasonably required by ACSL;
- (d) shall provide ACSL with such information and materials as ACSL may reasonably require in order to supply the relevant Services and/or Product, and ensure that such information is accurate in all material respects;
- (e) shall prepare its premises for the supply of the relevant Services (where applicable);
- (f) shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (where applicable);
- (g) agrees that ACSL may from time to time monitor or record calls made to ACSL or by ACSL to improve Service Customer service, for training or for marketing purposes;
- (h) agrees that ACSL shall not be liable or responsible for any failure or delay in the Services due to or in connection with any third party infrastructure applicable to the supply of any Services;
- (i) agrees to co-operate with any criminal investigations or any investigation of any regulatory body that is applicable to the supply of any of the Services;
- (j) be responsible for ensuring the accuracy of all specifications, drawings, sketches, plans, descriptions and instructions provided to ACSL in connection with the supply of any Services and/or Product; and
- (k) shall comply with all Service Specific Conditions.
- 9.2 The Service Customer is responsible and shall be liable to ACSL for the use of the Services (including for any Charges incurred) by the actions of any of its employees and any other person who has been given access to use the Services by the Service Customer and any person who gains access to use the Services for fraudulent purposes including in each case where such use was not authorised by the Service Customer. The Service Customer is strongly advised to install and enforce security provisions to prevent unauthorised and/or fraudulent use.
- 9.3 If ACSL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Service Customer or failure by the Service Customer to perform any relevant obligation or comply with any obligation or policy under the Conditions (**Service Customer Default**):
- (a) ACSL shall without limiting its other rights or remedies have the right to suspend performance of any Service until the Service Customer remedies the Service Customer Default, and to rely on the Service Customer Default to relieve it from the performance of any of its obligations to the extent that the Service Customer Default prevents or delays ACSL's performance of any of its obligations;
- (b) ACSL shall not be liable for any costs or losses sustained or incurred by the Service Customer arising directly or indirectly from ACSL's failure or delay to perform any of its obligations as set out in this clause 9.3; and
- (c) the Service Customer shall reimburse ACSL on written demand for any costs or losses sustained or incurred by ACSL arising directly or indirectly from the Service Customer Default.
- 9.4 Without prejudice to clause 9.3 or any other remedy available to ACSL, ACSL shall be entitled to suspend the performance of any Service or terminate the Contract relating to the relevant Service without further liability to the Service Customer in the event that ACSL:
- (a) is obliged to comply with any order, instruction or request of any competent governmental body;
- (b) terminates the provision of telecommunications services;
- (c) in its reasonable opinion, ACSL or the Carrier believes the Service are being used fraudulently or unlawfully; or
- (d) in its reasonable opinion ACSL or the Carrier needs to carry out improvements or repairs to any networks or Product relating to the applicable Services.
- 9.5 ACSL shall not be liable for any charges resulting from or in connection with fraudulent or unauthorised use of a Service and/or Product and the Service Customer shall be responsible for and pay all charges, costs, fees and expenses resulting from or in connection with any fraudulent or unauthorised use of any Service and/or Product.
- 10. CHARGES AND PAYMENTS FOR SERVICES**
- 10.1 ACSL reserve the right to increase charges for all services every April. Pursuant to clauses 10.7 and 10.12, it is agreed that ACSL may increase the Charges payable each April by 3.9% plus the latest available CPI rate in respect of all the Products, Services, licence fees and software (if any) as supplied by ACSL. We reserve the right to apply later (up to the subsequent April) and backdate costs if not applied in April for any reason.
- 10.1A The Charges for the Services and/or Product shall be charged to and payable by the Service Customer in accordance with this clause 10 and in the case of Data Services and Fixed Network Services in accordance with this clause 10 and clause 11.
- 10.2 The Charges for the Product and Installation Services shall be as specified in the Services Order Form and calculated in accordance with these Conditions. Except as otherwise specified in 1 the Services Order Form, Charges for Product and Installation Services shall be payable on Delivery.
- 10.3 The Service Customer shall pay any deposit specified in the Services Order Form within seven days of submitting the Services Order Form to ACSL.
- 10.4 The Charges for the Maintenance Services shall be as specified in the Services Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Services Order Form, Charges for Maintenance Services shall be payable annually in advance with the first payment due on the Commencement Date and continuing to be payable thereafter on each anniversary of the Commencement Date.
- 10.5 Where clause 4.8 applies in relation to Maintenance Services, ACSL shall be entitled to make such additional charges as are calculated in accordance with the Tariff.
- 10.6 ACSL may charge the Service Customer a call out fee where such a call out occurs based on incorrect information being provided to ACSL or where a call out occurs but the operative is unable to gain access to the premises within the times notified to the Service Customer for the call out.
- 10.7 The Charges for the Maintenance Services shall increase on each anniversary pursuant to the rate stated at clause 10.1.
- 10.8 The Charges for the IT Support Services shall be as specified in the Services Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Services Order Form or these Conditions, Charges for IT Support Services shall be payable monthly in advance with the first payment due on the Commencement Date and continuing to be payable each month thereafter on the anniversary of the Commencement Date.
- 10.9 Where IT Support Services are provided during Out of Hours or at the Service Customer's premises (or such location as is required by the Service Customer), the Charges shall be calculated by reference to the applicable hourly rates specified in the Services Order Form, or, if not stated in the Services Order Form, such hourly rates as specified in the Tariff. ACSL may invoice the Service Customer in respect of such services rendered, immediately after their provision.
- 10.10 Where clause 7.11 applies in relation to the IT Support Services, ACSL shall be entitled to make such additional charges as are calculated in accordance with or stipulated in the Tariff.
- 10.11 Notwithstanding clause 10.1 where annual increased charges apply, ACSL shall not further increase the monthly charge or its hourly rates in respect of the IT Support Services unless the Service Customer's network or user count has increased and at which point, any increase would need to be agreed by both parties prior to any increase being applied. The Service Customer's network and user count will be reviewed by ACSL every six months from the Commencement Date.
- 10.12 The provisions of this clause apply to any proposed increase in the Charges other than those referred to in clause 10.14 below (which reflect an increase caused by regulatory changes in respect of which the provisions of clause 10.14 apply). ACSL reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff). ACSL will give the Service Customer written notice of any such increase not less than 30 days before the proposed date of the increase. If such increase is not acceptable to the Service Customer, it shall notify ACSL in writing within 14 days of the date of ACSL's notice that the Client wishes to terminate the Contract, failing which the Service Customer shall be deemed to have accepted the changes.
- 10.13 Notwithstanding clause 10.1 where annual increased charges apply, subject to applicable regulations, ACSL reserves the right to further increase its Charges for any Service (including without limitation by revising any Tariff) as a result of any increase in charges made to ACSL by third party providers to it by a sum equal to any such increase. In such circumstances the Service Customer shall not have the right to cancel the Contract.
- 10.14 Where ACSL proposes to increase its Charges for any Service (including by revising without limitation any Tariff) as a consequence of a regulatory change and that the increase is no greater than the additional cost to ACSL caused by the regulatory change, it will give the Service Customer written notice of any such increase not less than 30 days before the proposed date of the increase. In such circumstances the Service Customer shall not have the right to cancel the Contract.
- 10.15 Except where otherwise specified in these Conditions or the relevant Order for any Service, the Service Customer shall pay each invoice submitted by ACSL.

- (a) within 14 days of the date of the invoice; and
 (b) in full and in cleared funds to a bank account nominated in writing by ACSL.
- 10.16 Time shall be of the essence for payment of all Charges shall be of the essence of the Contract.
- 10.17 All amounts payable by the Service Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). The Service Customer shall pay to ACSL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 10.18 Invoices shall be deemed to have been accepted if the Service Customer does not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to ACSL within 30 days of the date of the invoice.
- 10.19 If the Service Customer fails to make any payment due to ACSL under the Contract by the due date for payment, then the Service Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Service Customer shall pay the interest together with the overdue amount.
- 10.20 The Service Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). ACSL may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Service Customer against any amount payable by ACSL to the Service Customer.
- 10.21 ACSL may exercise a lien over any equipment or goods in ACSL's possession belonging to the Service Customer, for all monies payable by the Service Customer to ACSL.
- 10.22 Any delay in ACSL raising an invoice for any Charges shall not prohibit ACSL from raising an invoice for the applicable Charges at a later date and the Service Customer shall pay such Charges.
- 10.23 ACSL reserves the right to make additional charges for paper billing, late payment, reconnection, non-direct debit payment methods and incorrect fault reporting by the Service Customer. Such charges are as published by ACSL from time to time and are published at www.URL.co.uk.
- 10.24 You agree to allow ACSL to arrange payments and collection of all monies due, to be collected via a third party.
- 11. ADDITIONAL TERMS RELATING TO CHARGES FOR DATA SERVICES AND FIXED NETWORK SERVICES**
- 11.1 The Charges for the Fixed Network Services and the Data Services shall be as detailed in the Services Order Form (subject always to clause 10.7) and as otherwise determined in accordance with the Contract.
- 11.2 Charges for line rental are payable from the Handover Date monthly in advance by direct debit, or such other method as is specified in the Services Order Form.
- 11.3 The Service Customer shall pay for all Charges for calls whether made by the Service Customer or any third party. Subject to clause 11.4, ACSL shall invoice the Service Customer monthly in arrears for all call Charges and the Service Customer shall pay such invoice within 14 days of the date of the relevant invoice by direct debit.
- 11.4 Notwithstanding clause 11.2 and clause 11.3, ACSL reserves the right to invoice the Service Customer for Charges at any time.
- 11.5 If ACSL supplies the Service Customer with any temporary Data Services and/or Fixed Network Services, it may charge the Service Customer in advance for the whole period during which the temporary services are to be provided.
- 12. ADDITIONAL TERMS RELATING TO CHARGES FOR MOBILE SERVICES**
- 12.1 Each April we will increase the Charges for Mobile Services by no more than 3.9% plus the CPI rate published in March of that year. We reserve the right to apply later (up to the subsequent April) and backdate costs if not applied in April for any reason.
- 12.2 Charges in respect of calls are subject to fluctuation or change by ACSL without notice to the Service Customer.
- 13. CANCELLATION CHARGE**
- If the Service Customer cancels a Service, ACSL may charge and the Service Customer shall pay a fee in respect of each such cancellation (**Cancellation Fee**).
- 14. LIMITATION OF LIABILITY**
- 14.1 Nothing in the Contract shall limit or exclude ACSL's liability for:
 (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 (b) fraud or fraudulent misrepresentation by ACSL; or
 (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1, ACSL shall not be liable to the Service Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 (a) loss of profits;
 (b) loss of sales or business;
 (c) loss of agreements or contracts;
 (d) loss of anticipated savings;
 (e) loss of or damage to goodwill;
 (f) loss of use or corruption of software, data or information;
 (g) any indirect or consequential loss; or
 (h) any loss or consequential loss as a result of Toll Fraud, attack, viruses, interference, hacking, or other security intrusion and disclaims any liability relating thereto.
- 14.3 Subject to clause 14.1 and clause 14.2, ACSL's total liability to the Service Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, be limited to the equivalent of the total Charges paid by the Service Customer in that period for the Product and/or the relevant Service in respect of which the claim arose.
- 14.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.
- 14.5 If the Service Customer is a consumer, nothing in these Conditions shall prejudice its statutory rights.
- 14.6 This clause 14 shall survive termination of the Contract.
- 15. TERMINATION**
- 15.1 Without limiting its other rights or remedies, ACSL may terminate the Contract (in whole or in part) without further liability to the Service Customer by giving the Service Customer not less than 30 days written notice.
- 15.2 Without limiting its other rights or remedies, ACSL may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Service Customer if:
 (a) the Service Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Service Customer being notified in writing to do so;
 (b) the Service Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 (c) the Service Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Customer with one or more other companies or the solvent reconstruction of the Service Customer;
 (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Customer with one or more other companies or the solvent reconstruction of the Service Customer;
 (e) the Service Customer (being an individual) is the subject of a bankruptcy petition or order;
 (f) a creditor or encumbrancer of the Service Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
 (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Service Customer (being a company);
 (h) the holder of a qualifying floating charge over the assets of the Service Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 (i) a person becomes entitled to appoint a receiver over the assets of the Service Customer or a receiver is appointed over the assets of the Service Customer;
 (j) any event occurs or a proceedings are taken with respect to the Service Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(b) to clause 15.2(i) (inclusive);
 (k) the Service Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its

business;

- (l) the Service Customer's financial position deteriorates to such an extent that in ACSL's opinion the Service Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 (m) the Service Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, ACSL may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Service Customer if the Service Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within 30 Business Days after being notified in writing to do so.
- 15.4 Without limiting its other rights or remedies, ACSL may suspend provision of the Services under the Contract or any other contract between the Service Customer and ACSL if the Service Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m), or ACSL reasonably believes that the Service Customer is about to become subject to any of them, or if the Service Customer fails to pay any amount due under this Contract on the due date for payment.
- 16. CONSEQUENCES OF TERMINATION**
- 16.1 On termination of the Contract for any reason:
 (a) the Service Customer shall immediately pay to ACSL all of ACSL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ACSL shall submit an invoice, which shall be payable by the Service Customer immediately on receipt;
 (b) the Service Customer shall return any Product which has not been fully paid for. If the Service Customer fails to do so, then ACSL may enter the Service Customer's premises and take possession of the Product. Until it has been returned, the Service Customer shall be solely responsible for the safe keeping of such Product and will not use it for any purpose not connected with the Contract;
 (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Contract shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 16.2 Where the Service Customer is a Small Business Service Customer, the Service Customer may terminate a Contract for Fixed Network Services or Data Services at any time prior to commencement of the supply of such Services.
- 17. FORCE MAJEURE**
- 17.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of ACSL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of ACSL or otherwise), failure of a utility service (including without limitation street cabling, network or infrastructure failure or fault), failure of a transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or utility suppliers.
- 17.2 ACSL shall not be liable to the Service Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 17.3 If the Force Majeure Event prevents ACSL from providing any of the Services for more than 10 Business Days, ACSL shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Service Customer.
- 18. GENERAL**
- 18.1 Assignment and other dealings:**
 (a) ACSL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract (in whole or in part) and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 (b) The Service Customer shall not, without the prior written consent of ACSL, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 18.2 Notices:**
 (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail. (Emails to ACSL must be sent to melmeyer@adaptivecomms.co.uk).
 (b) A notice or other communication shall be deemed to have been received:
 (i) if delivered personally, when left at the address referred to in clause 18.2(a);
 (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
 (iv) if sent by e-mail, one Business Day after transmission;
 (c) A notice or other communication sent by email to ACSL must be sent to melmeyer@adaptivecomms.co.uk and if sent to a different email address shall not be deemed to have been received; and
 (d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.3 Severance:**
 (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract, or
 (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.4 Waiver:** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.6 Third parties:** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7 Variation:** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by ACSL. ACSL reserves the right to make changes to these Conditions from time to time.
- 18.8 Information about ACSL:** ACSL operates the website <https://adaptivecomms.co.uk>. ACSL is Adaptive Communication Solutions Limited *via* AdaptiveComms, a company registered in England and Wales under company number 04677602 with its registered office at 11b Houghton Street, Southport, Merseyside, PR9 0NS. ACSL's VAT number is 811948718. Please refer to ACSL's website at <https://adaptivecomms.co.uk> for information about how to contact us.
- 18.9 Dispute resolution:** The Service Customer must notify any complaints or disputes to ACSL in accordance with its Complaints and Dispute Resolution Procedure available at https://adaptivecomms.co.uk/wp-content/uploads/2020/08/AdaptiveComms_Complaints_Code.pdf. ACSL shall use reasonable endeavours to resolve any complaint or dispute. Further information concerning the Service Customer's rights in relation to any dispute or complaint are specified in the Complaints and Dispute Resolution Procedure.
- 18.10 Governing law:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 18.11 Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

