



## **Fixed Line Terms and Conditions**

**The Customer's attention is particularly drawn to the provisions of clause 13.**

### **1. INTERPRETATION**

#### **1.1 Definitions.** In these Conditions, the following definitions apply:

**Abzorb:** Abzorb Systems Ltd registered in England and Wales with company number 04058821.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Call Charges:** charges payable by the Customer for accessing the Services as set out in the Order, calculated by charging a rate per unit of usage for the element of the Services used.

**Channels:** the quantity of communication paths on the Line.

**Charges:** periodic and other charges and fees including but not limited to Call Charges, Line Rental Charges, connection charges, Equipment prices, Minimum Spend Re-claim and all other charges payable by the Customer under these Conditions or for using the Services.

**Commencement Date:** means the date of Abzorb's acceptance of the Order pursuant to clause 2.3, provided that if the Customer shall make any further orders for Services or Equipment after the Commencement Date the commencement date shall, in relation to those Services or Equipment, be the date that is the later of the date of the dispatch of Equipment or the time the Services are activated.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 10 and clause 15.11.

**Contract:** the contract between Abzorb and the Customer for the supply of Equipment and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Equipment and/or Services from Abzorb.

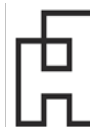
**Customer Equipment:** any equipment or materials used by the Customer to access the Services not supplied by Abzorb to the Customer.

**Force Majeure Event:** has the meaning given to it in clause 14.

**Equipment:** any Fixed Line Handset or other material supplied to the Customer by Abzorb.

**Fixed Line Handset:** a telecommunications handset capable of making and receiving telephone calls.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential



information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Line:** a communications line which contains the number of Channels as stated in the Order.

**Line Rental Charges:** monthly or periodic charges payable by the Customer to access the Services.

**Minimum Spend Re-claim:** where a Minimum Spend Requirement is specified in the Order the Minimum Spend Re-claim shall be calculated as the greater of:

- (a) Minimum Spend Requirement ÷ number of months of Minimum Term x number of months left in Minimum Term from the date of termination; or
- (b) Minimum Spend Requirement – Overall Spend.

Reference to a month in this definition shall be to a calendar month or part thereof.

**Minimum Spend Requirement:** the amount specified in the Order for a particular Service (where applicable).

**Network:** the third party telecommunications network over which the Services are provided.

**Network Operator:** means the operator of the Network.

**Order:** the Customer's order for the supply of Equipment and/or Services, as set out in the schedule of the agreement form containing details of the Customer's purchase order.

**Overall Spend:** where a Minimum Spend Requirement is specified in the Order, the aggregate Charges incurred and paid by the Customer to Abzorb during the Minimum Term for the Service to which the Minimum Spend Requirement relates but excluding any charges relating to Equipment.

**Port:** transfer of a telephone number connected to a Network from that Network to another Network operated by a different Network Operator.

**RRP Line Rental Charges:** the recommended retail prices in respect of the Line Rental Charges stated on Abzorb's website (the link to which is included in the Order) at the close of business of Abzorb on the Commencement Date.

**Services:** any service including but not limited to provision of Equipment and fixed line telephone services and any other services, supplied by Abzorb to the Customer in accordance with these Conditions and as set out in the Order.

**Subsidy:** an amount equal to the total aggregate value of the following (where applicable):

- (a) any cashback given to the Customer by Abzorb and stated in the Order as 'Cashback Sum';
- (b) an amount equal to any Equipment fund provided to the Customer by Abzorb and stated in the Order as 'Equipment Fund'; and



- (c) an amount equal to the difference between the actual Line Rental Charges and the RRP Line Rental Charges which would have been payable by the Customer to Abzorb during the Minimum Term 'Line Rental Subsidy';.
- (d) any Equipment subsidy stated in the Order as 'Equipment Subsidy'.

**Suspension Lifting Fee:** Abzorb's reasonable charges for lifting any suspended Services in force from time to time.

**Software:** computer programs, software packages or modules or any part of the same that are supplied by any third party licensors or Abzorb.

**Software Licence:** licencing terms and conditions setting out obligations in relation to the use of Software and the rights of the user and owner of Software.

**Term:** means the term of the Contract calculated in accordance with clause 9.1.

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

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) 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;
- (d) 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;
- (e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

**2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.
- 2.2 The Customer shall order the Services and Equipment by such method as Abzorb shall permit from time to time.



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- 2.3 The Order shall only be deemed to be accepted when Abzorb issues written acceptance of the Order or if no acceptance is issued, when Abzorb supplies Equipment and/or Services to the Customer.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Abzorb which is not set out in the Contract.
- 2.5 Any descriptive matter or advertising issued by Abzorb and any descriptions of the Equipment or illustrations or descriptions of the Services contained in any catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by Abzorb shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

### **3. PROVISION OF SERVICES AND ABZORB'S OBLIGATIONS**

- 3.1 Abzorb shall use reasonable endeavours to provide the Services to the Customer.
- 3.2 Abzorb shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 Abzorb shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulations or safety requirement, or which do not materially affect the nature or quality of the Services, and Abzorb shall notify the Customer in any such event.
- 3.4 Abzorb warrants to the Customer that the Services will be provided using reasonable care and skill and to a level expected of a reasonably competent Abzorb of similar telecommunications services.
- 3.5 The Customer acknowledges that from time to time there are likely to be faults in the Services provided by Abzorb as a result of the nature of telecommunications technology and that Abzorb does not guarantee or give any warranties in connection with the functionality of the Network.



3.6 The quality and availability of the Services is also subject to:

- (a) local geography and topography;
- (b) weather and/or atmospheric conditions;
- (c) degradation, congestion or maintenance requirements of the Network;
- (d) other physical or electromagnetic obstructions or interference;
- (e) faults in other telecommunication networks; and
- (f) the compatibility of Equipment and Customer Equipment used.

#### 4. GENERAL PROVISIONS RELATING TO THE SERVICES AND EQUIPMENT

4.1 The Customer shall:

- (a) ensure that the terms of the Order (if submitted by the Customer) are complete and accurate;
- (b) co-operate with Abzorb in all matters relating to the Services;
- (c) provide Abzorb with such information and materials as Abzorb may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) procure the compatibility of its equipment and any Customer Equipment, processes and systems with the Services;
- (e) keep confidential and not disclose to any third party any Customer account password, identification code, number, or name issued by Abzorb permitting access to the Services or Equipment;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for receiving the Services before the date on which the Services are to start;
- (g) in relation to any Equipment that is to be installed for the Customer (**Installed Equipment**) by or on behalf of Abzorb (**Installation Services**) the Customer shall:
  - (i) notify Abzorb of any health and safety and security policies in relation to the Customer's premises;
  - (ii) ensure all necessary and appropriate authorities, licences and consents have been obtained and complied with in order to allow Abzorb to install the Equipment;
  - (iii) provide a suitable and safe working environment;
  - (iv) grant Abzorb (and any persons authorised by Abzorb) a licence to install, store, operate, maintain and support any Installed Equipment on the Customer's premises to enable provision of the Services;



- (v) provide Abzorb with reasonable access to the Customer's premises and systems during normal office hours and if necessary outside these hours for the installation, implementation, de-commissioning, removal and ongoing maintenance and support of the Services and/or Equipment; and
  - (vi) not modify, tamper, move or interfere with any Installed Equipment in any way other than to assist with any installation and implementation, without the prior written consent of Abzorb, nor to use the Installed Equipment for any purpose other than for the Services;
- (h) unless otherwise agreed by Abzorb in writing, not use the Equipment or Services for making any automated communications (whether by way of any device used to forward or divert calls with the intention of reducing Charges (except where any such device is supplied as part of the Service by Abzorb to the Customer in accordance with these Conditions, or other method)), whether by way of calls, texts or other messaging or data sending method or e-mail;
- (i) procure the Services and Equipment are used for its own use as authorised by and in accordance with these Conditions and it will not re-sell, re-supply or otherwise distribute the Services and Equipment and shall procure anyone authorised to use such Services and Equipment under these Conditions shall not do so;
- (j) comply with any manuals, guidance and any reasonable instructions issued by Abzorb or relevant third party manufacturer or Abzorb concerning the use of the Equipment and Services and co-operate with Abzorb's reasonable security and other checks (which may include Abzorb making calls or sending communications to the end users);
- (k) only use Equipment or Customer Equipment which is authorised by Abzorb (such authorisation not to be unreasonably withheld) and compatible for use on the Network;
- (l) inform Abzorb upon becoming aware of any suspected or actual unauthorised use of the Services or Equipment and take all steps necessary, including any steps requested by Abzorb, to prevent such use;
- (m) not use the Equipment or Services:
  - (i) for any purposes which:
    - (A) may be illegal, fraudulent, abusive or in a manner which may constitute a nuisance;
    - (B) in any way which causes annoyance, inconvenience or needless anxiety whether as set out in the Communications Act 2003 or otherwise, nor use the Network or the Services to send spam or unsolicited communications without the receiver's consent;
  - (ii) to send, store, communicate or knowingly receive content which is abusive, indecent, defamatory, obscene, menacing, unlawful or a nuisance; or



- (iii) in any way that breaches the provisions of clause 8 (Software Licence) or clause 12 (Intellectual Property) or contravenes the Intellectual Property Rights of Abzorb or any third party;
- (n) not knowingly distribute malicious software or permit the hacking or unauthorised modification of any Equipment or Software or the Network;
- (o) comply with any applicable fair use policy that Abzorb may issue from time to time;
- (p) comply with all applicable regulatory provisions, laws, codes of conduct and guidelines whether within the United Kingdom or outside;
- (q) if requested, will sign written assurances and other import/export-related documents as may be required to comply with all applicable import/export regulations;
- (r) not use the Equipment or Services in a manner which would or could impair the Network; and
- (s) not use the Equipment or Services in any way which would or would likely cause any detriment to Abzorb's reputation or commercial standing.

4.2 Any Services provided to the Customer by Abzorb but that are not contained in the Order shall, unless otherwise agreed by the Customer and Abzorb, be governed by this Contract.

## **5. INSTALLATION SERVICES**

### **5.1 In relation to any Installation Services:**

- (a) Abzorb reserves the right to make further charges in respect of Installation Services if, as a result of the Customer's acts or omissions, installation cannot be completed on the agreed date;
- (b) on completion of installation of the Installed Equipment, Abzorb or its authorised sub-contractors will carry out acceptance testing to confirm that the relevant Service is operational. Upon the completion of such acceptance testing to the reasonable satisfaction of Abzorb, Abzorb shall provide a written sign-off confirming completion of the installation. Unless the Customer notifies Abzorb within 3 Business Days of receipt of the written sign-off that the installation has not been carried out properly the Customer shall be deemed to have accepted that the installation has been successfully completed;
- (c) if the Customer notifies Abzorb within 3 Business Days of receipt of the written sign-off that it reasonably believes the installation has not been carried out properly Abzorb shall have due regard to the Customer's representations and take any steps Abzorb believes are reasonably necessary. Once Abzorb has taken such steps it shall provide a written sign off confirming completion of the installation. On receipt of the sign-off the Customer shall be deemed to have accepted that the installation has been successfully completed;



- (d) following acceptance pursuant to sub-clauses (b) and (c) above, Abzorb will not be responsible for providing further installation and implementation services to the Customer and if any such services are required, Abzorb may charge the Customer reasonable fees to be agreed in advance with the Customer;
- (e) the Customer shall maintain at its own expense, policies of insurance against public liability and other third party liability in connection with any injury (including death), loss or damage to any persons or property belonging to any third party arising out of or in connection with the Customer's use of the Services, including the storage of the Installed Equipment on the Customer's premises; and
- (f) if Abzorb or its authorised sub-contractors cause any damage to the Customer's premises during the installation of the Installed Equipment due to the negligence of Abzorb or its authorised sub-contractors, Abzorb will cover the reasonable costs of any work that is needed to restore the premises to the condition they were in immediately before the damage occurred. In all other cases, restoration is the Customer's responsibility.

## **6. SERVICE & EQUIPMENT SUSPENSION/WITHDRAWAL**

6.1 Without limiting its other rights or remedies, Abzorb may suspend all or part of the Services and/or withdraw the Equipment and/or suspend all further deliveries of Equipment under the Contract or any other contract with the Customer for any of the following reasons:

- (a) to comply with any regulations or laws;
- (b) to comply with recommendations, directions or regulations from any regulatory body or authority responsible for oversight of Abzorb;
- (c) for Network maintenance, modification or technical failure or any reason relating the security or safeguarding of the Network;
- (d) upon instruction by emergency services or any government, regulatory or appropriate authority;
- (e) to reduce fraud;
- (f) as a result of suspension of any services provided by the Network Operator;
- (g) if Abzorb or its Abzorbs no longer provides the Service or either of them have decided that the Service or Equipment is no longer suitable for business operations (provided that the Customer has been given at least 20 days' notice of such withdrawal);
- (h) if the Customer exceeds any agreed credit limit; or
- (i) if:
  - (i) the Customer is in breach of its obligations to Abzorb under the Contract (including but not limited to non-payment or threatened non-payment of Charges);





- (ii) where an end user has caused the Customer to be in breach of any of its obligations under clause 4.1;
  - (iii) the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(m), or Abzorb reasonably believes that the Customer is about to become subject to any of them; or
  - (iv) if Abzorb's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation
- (together Customer Default).

6.2 In relation to any suspension of Services pursuant to clause 6.1:

- (a) Abzorb shall use reasonable endeavours to ensure that any such suspension is kept to a minimum except where such suspension results from a Customer Default (in which case Abzorb shall restore the Services as soon as the circumstances which gave rise to the suspension as soon as the circumstances which gave rise to the suspension are remedied by the Customer to the reasonable satisfaction of Abzorb) or is as a result of clause 6.1(g);
- (b) Abzorb shall give notice to the Customer of the service suspension as soon as reasonably practicable;
- (c) with regard to any Customer Default, Abzorb shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract to the extent the Customer Default prevents or delays Abzorb's performance of any of its obligations;
- (d) Abzorb shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Abzorb's failure or delay to perform any of its obligations as set out in this clause 6; and
- (e) the Customer shall reimburse Abzorb on written demand for any costs or losses sustained or incurred by Abzorb arising directly or indirectly from the Customer Default.

6.3 The Customer shall remain liable for all Charges during any period of suspension, and where the suspension has been implemented under clauses **Error! Reference source not found.** or 6.1(i) the Customer shall also pay all reasonable costs and expenses incurred by Abzorb in the implementation of the suspension and a Suspension Lifting Fee per suspended Channel. Abzorb shall restore the Services as soon as the circumstances which gave rise to the suspension are remedied.



## **7. EQUIPMENT**

- 7.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 7.2 Title to the Equipment shall not pass to the Customer until Abzorb receives payment in full (in cash or cleared funds) for the Equipment and any other Equipment that Abzorb has supplied to the Customer in respect of which payment has become due. If any Equipment is provided to the Customer free of charge, title shall pass to the Customer on delivery.
- 7.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- (a) maintain the Equipment in satisfactory condition;
  - (b) notify Abzorb immediately if it becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(m); and
  - (c) give Abzorb such information relating to the Equipment as Abzorb may require from time to time.
- 7.4 The Customer must satisfy itself that all Equipment is suitable for its intended purpose and requirements.
- 7.5 Equipment may be subject to additional terms and conditions (such as those contained in user manuals and in-box documentation) which the Customer accepts by retaining and using such Equipment. If the Customer does not consent to such additional terms it must send the affected Equipment to Abzorb at its own cost within 7 days of delivery.
- 7.6 Abzorb shall use reasonable endeavours to procure that the Customer shall have the benefit of any warranties that Abzorb has from the relevant manufacturer of the Equipment during the period which such warranties subsist.
- 7.7 If during the manufacturer's warranty period the Equipment has a fault or becomes faulty as a result of a defect the Customer shall notify Abzorb immediately and follow the repair or replacement process in force for the manufacturer of the defective equipment from time to time as notified to the Customer by Abzorb. If the defect is not covered by the manufacturer's warranty or arises as a result of damage, misuse or other cause then the Customer must notify Abzorb as soon as reasonably practicable and send the affected Equipment to Abzorb at its own cost. Abzorb shall then provide a quote for repairing or replacing the affected Equipment. In the event that the Customer does not accept the quote or if the affected Equipment is in the view of Abzorb beyond economical repair, the Customer must pay Abzorb an administration fee of £30 exclusive of VAT and the cost incurred by Abzorb in returning the affected Equipment to the Customer.



- 7.8 In the event that the Equipment is not in accordance with the Order, the Customer must notify Abzorb in writing within 10 Business Days following receipt of the Equipment, and Abzorb shall promptly replace the Equipment.
- 7.9 The Customer must notify Abzorb immediately if it becomes aware of the loss, theft or damage of any Equipment, and shall remain liable for all Charges incurred by the use of any lost or stolen Equipment until reported to Abzorb. Data on any lost or stolen Equipment is at the Customer's risk and the sending of any command for remote wiping of data (such as a device management solution) is the responsibility of the Customer. The Customer must send any remote wipe command prior to reporting the Equipment lost or stolen and Abzorb will use reasonable endeavours to notify the relevant Network Operator to carry such command across the Network. The Customer acknowledges that once the loss or theft of the Equipment is notified to Abzorb, Abzorb will terminate the ability of the Equipment to communicate with the Network.
- 7.10 Abzorb may recall, update or have access to the Equipment as reasonably required to enhance or maintain the quality of Services or to update Software, but will endeavour to minimise any disruption caused to the Customer.
- 7.11 The Customer acknowledges that Customer Equipment not authorised for use by Abzorb may not be compatible with the Network or result in reduced or impaired functionality.
- 7.12 The Customer shall not tamper with or attempt to repair or service the Equipment and acknowledges that any attempt to do so is likely to result in any manufacturer warranty referred to in clause 7.6 above becoming invalid.
- 7.13 Where applicable the Customer is permitted to use the Equipment (and associated Services) to access internet based services but Abzorb shall have no responsibility in respect of the same and shall not be liable for any loss, damage or expense suffered by the Customer in connection with such use of internet based services.
- 7.14 Any Equipment that is provided to the Customer by Abzorb but is not contained in the Order shall, unless otherwise agreed by the Customer and Abzorb, be governed by this Contract.

## **8. SOFTWARE LICENCE**

- 8.1 Abzorb will, subject to the terms of any Software Licence provided with the Services or Equipment and the terms of the Contract, either grant the Customer, or procure that the relevant licensor will grant to the Customer, a revocable licence to use any Software required in connection with use of the Services or Equipment during the Term for the purposes of properly accessing the Services in



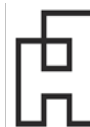
accordance with these Conditions provided that the Customer shall not be permitted to transfer or sub-licence the licence which shall be granted on a non-exclusive basis.

- 8.2 The Customer has no right and shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any Software in whole or in part. The Customer shall not use the Software with anything other than the Equipment, unless otherwise expressly specified or approved by Abzorb.
- 8.3 The Customer acknowledges that:
- (a) some Equipment and/or Services provided by Abzorb to the Customer may include Software subject to a Software Licence which the Customer will not be able to use without accepting the terms of the Software Licence;
  - (b) Abzorb shall not be liable to the Customer in respect of any inability of or failure by Abzorb to provide the Services as a result of the Customer not accepting the terms of any Software Licence; and
  - (c) the terms of any Software Licence shall comprise the entire agreement in respect of the relevant Software and the Customer shall not have any rights or remedies against Abzorb in respect thereof.
- 8.4 If the Customer does not accept the licence terms relating to the Software, it shall not use the relevant feature of the Service to which the Software relates and Abzorb shall not be required to deliver the relevant Service.
- 8.5 The Customer shall indemnify and keep indemnified Abzorb in full and on demand for any claim or for any losses incurred or suffered by Abzorb (including any legal costs) arising from any failure of the Customer to comply with the terms of the Software and relevant Software licences.
- 8.6 The licence granted under this Agreement to use Software may be terminated if the Customer disputes the ownership of any Intellectual Property Rights under these Conditions, fails to comply with any term of these Conditions or if the continued use or possession of the Software infringes the rights of any third party.
- 8.7 Software delivered to the Customer by electronic means cannot be reissued and the Customer shall ensure that correct email addresses are provided for these purposes and that any firewall or other protection will not prevent such delivery.



## 9. TERM AND TERMINATION

- 9.1 This Contract commences from the Commencement Date and shall continue for the term specified in the Order. If no such term is specified in the Order the Contract shall commence from the Commencement Date for a period of 24 months (**Minimum Term**) unless it is terminated earlier in accordance with these Conditions.
- 9.2 Without limiting its other rights or remedies, Abzorb may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - (b) the 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 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 Customer with one or more other companies or the solvent reconstruction of the 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of that the Customer;
  - (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
  - (f) a creditor or encumbrancer of the 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 14 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 Customer (being a company);
  - (h) the holder of a qualifying charge over the assets of the 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 Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(b) to clause 9.2(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in Abzorb's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the 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.

9.3 Abzorb may also terminate the Contract on 30 days' notice to the Customer following the expiry of the Minimum Term.

9.4 The Customer may terminate the Contract on 30 days' notice to Abzorb.

9.5 Save where this Contract or a Service is validly terminated in accordance with clause 14 and clause 10.4, if this Contract or a Service is terminated before the expiry of a Minimum Term or a Minimum Term expires before the Customer has achieved the Minimum Spend Requirement, the Customer shall immediately pay to Abzorb:

- (a) all Line Rental Charges which would have been payable by the Customer to Abzorb from and including the date of termination up to and including the last day of the Minimum Term remain to be paid to Abzorb (if any);
- (b) an amount equal to the Minimum Spend Re-claim;
- (c) an amount equal to the Subsidy (if any); and
- (d) an amount equal to the Subsidy and an early disconnection administration charge of £17.02 plus VAT for each Channel that is operational at the date of termination.

9.6 If the Contract is terminated before the end of the Minimum Term and the Customer has not paid all of the Charges and the payments referred to in clause 9.5, the Customer shall return to Abzorb all Equipment, and all other equipment provided to the Customer by Abzorb. If the Customer fails to do so, then Abzorb may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.



9.7 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Abzorb all of Abzorb's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Abzorb shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer will stop using the Services;
- (c) the Customer shall not be entitled to any unused Subsidy after termination or expiry of the Term;
- (d) the accrued rights and remedies of the parties as at termination shall not be affected, 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
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**10. VARIATION OF AGREEMENT**

10.1 Abzorb may vary the Contract, including but not limited to the scope of the Services and the Charges where such variations are required:

- (a) to enable Abzorb to comply with applicable law, regulations, regulatory requirement or licence;
- (b) as a result of any changes imposed on Abzorb by a third party Abzorb or manufacturer;
- (c) a change to Abzorb's operations provided such change is also implemented in relation to the majority of Abzorb's customers; or
- (d) as a result of any change in the rate of taxation or VAT.

10.2 Abzorb may also vary the Charges for the Services by providing at least 20 Business Days' notice to the Customer of the changes where such changes are not brought about as a result of any of the matters listed in clause 10.1 above.

10.3 Abzorb shall provide the Customer with as much notice as possible of any changes to be made under clause 10.1.

10.4 The Customer may terminate the affected part of the Contract where a change under clause 10.1(b) or clause 10.1(c) results in the Customer being liable to pay to Abzorb increased monthly charges which would result in the Customer having to pay an increase in such monthly charges (as a percentage) which are more than any increase in the retail prices index (also calculated as a percentage) or any other statistical measure of inflation published by any governmental body



authorised to publish measures of inflation from time to time, in the 12 month period before any increase.

## **11. CHARGES AND PAYMENT**

- 11.1 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Abzorb to the Customer, the Customer shall, on receipt of a valid VAT invoice from Abzorb, pay to Abzorb such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 11.2 The Charges for Equipment and Services shall be as set out in the Order. If the Charges are not set out in the Order they will be as set out in Abzorb's tariff guide current at the date of the Order.
- 11.3 In respect of Equipment, Abzorb shall invoice the Customer on or at any time after completion of delivery.
- 11.4 In respect of Services, Abzorb shall invoice the Customer monthly in advance in respect of Line Rental Charges and monthly in arrears in respect of Call Charges.
- 11.5 The Customer shall pay each invoice submitted by Abzorb:
- (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 Abzorb by way of direct debit unless Abzorb agrees to some other method of payment, and
- time for payment shall be of the essence of the Contract.
- 11.6 If the Customer fails to make any payment due to Abzorb under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclays 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 Customer shall pay the interest together with reasonable administration charges and all legal fees in the recovery or enforcement of such overdue amount along with the overdue amount itself.
- 11.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Abzorb may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Abzorb to the Customer.





- 11.8 The Customer consents to Abzorb carrying out credit checks and credit assessments on the Customer with credit reference agencies and other third parties.

## **12. INTELLECTUAL PROPERTY**

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services and Equipment shall be owned by Abzorb or the relevant third party owner (as the case may be).
- 12.2 Where Intellectual Property Rights are created during or as a result of the supply of the Services and Equipment to the Customer, these Intellectual Property Rights shall be owned by Abzorb or the third party rights owner as applicable. This clause shall not transfer the ownership of any Intellectual Property Rights created or owned by the Customer as a result of the receipt and ordinary use of the Services and such Intellectual Property Rights shall be owned by the Customer.
- 12.3 The Customer shall not:
- (a) do or omit to do anything which may jeopardise any Intellectual Property Rights of Abzorb or its licensor;
  - (b) dispute or challenge the rights of the relevant third party rights owner;
  - (c) apply for, or obtain, registration in any country of any trade or service mark or any other Intellectual Property Rights which consist of, or comprises of, or are confusingly similar to, the trade marks or Intellectual Property Rights of Abzorb or its licensors.
- 12.4 The Customer shall, if required by Abzorb, sign any agreement containing terms required by the owner of any Intellectual Property Rights to protect the owner's rights.

## **13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 13.1 Nothing in these Conditions shall limit or exclude Abzorb'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;
  - (c) breach of the terms implied by section 2 of the Supply of Equipment and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by section 12 of the Sale of Equipment Act 1979 (title and quiet possession); or
  - (e) defective products under the Consumer Protection Act 1987.



13.2 Subject to clause 13.1:

- (a) Abzorb shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, business, data, anticipated savings or goodwill or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Abzorb's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Charges paid to Abzorb during the Minimum Term.

13.3 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and the terms implied by sections 3 to 5 of the Supply of Equipment and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 Abzorb shall not be liable to support the Services if the Customer's computer systems, equipment and processes are not compatible for use with the Services.

13.5 This clause 13 shall survive termination of the Contract.

**14. FORCE MAJEURE**

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Abzorb including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Abzorb or any other party), failure of a utility service or 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 Abzorbs or subcontractors.

14.2 Abzorb shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents Abzorb from providing any of the Services and/or Equipment for more than 2 weeks, Abzorb shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**15. GENERAL**

15.1 **Legal Compliance.** The Equipment and/or Software may be subject to export control laws and regulations. The Customer agrees to comply with any applicable export laws, regulations,



prohibitions or embargoes of any country and agrees to obtain written authority from the relevant licensing authority where necessary. Abzorb does not represent that any necessary export approvals and/or licences have been obtained or will be granted in respect of the Equipment.

- 15.2 **Anti-Bribery.** Abzorb shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption.
- 15.3 **Data Protection.** The Customer agrees and acknowledges that Abzorb will process personal and traffic data and that Abzorb shall be the “controller” of such data for the purposes of the Data Protection Act 1998 and the General Data Protection Regulations 2016 (when implemented). The Customer authorises Abzorb to process such data (and shall procure that all end users of the Equipment and Services are made aware of this) for the following purposes:
- (a) maintaining the integrity and security of the Network;
  - (b) recording or monitoring communications in accordance with applicable laws and regulations;
  - (c) disclosing data to third parties to comply with applicable laws and regulations;
  - (d) disclosing data to its sub-contractors and re-sellers; and
  - (e) market research and business development.
- 15.4 **Confidentiality.** The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Abzorb, its employees, agents or subcontractors, and any other confidential information concerning Abzorb's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Customer may also disclose such of Abzorb's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. On termination of this Contract the Customer shall destroy any confidential information of Abzorb in the Customer's possession or control. This clause shall survive termination of the Contract.
- 15.5 **Assignment and other dealings.**
- (a) Abzorb 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 and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.



- (b) The Customer shall not, without the prior written consent of Abzorb, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 15.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail to the email address (if any) set out in the Order.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail to the email address (if any) set out in the Order one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 15.7 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.
- (b) If one party gives notice to the other of the possibility that 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.

15.8 **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 under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor 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.



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- 15.9 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.10 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.11 **Variation.** Subject to clause 10 and 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 Abzorb.
- 15.12 **Governing law.** This 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.
- 15.13 **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 this Contract or its subject matter or formation (including non-contractual disputes or claims).