



AGREEMENT

BETWEEN

EXCHANGE COMMUNICATIONS INSTALLATIONS
LIMITED

AND

Company Name

FOR
CLOUD SERVICES SOLUTION

AGREEMENT No E****



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This agreement ("Agreement") is effective from the date of ***** customer signing OR from a specific date between Exchange Communications Installations Limited, whose registered office is situated at Exchange House, 11-17 Kerr Street, Kirkintilloch, Glasgow, G66 1LF, company number: SC499057, ("Exchange") and ***** ("Customer"), whose registered office is situated at *****, company number : XXXXX

1. DEFINITIONS

1.1	In this Agreement the following Terms shall have the following meanings:
"Acceptance Date"	The date the Cloud Services are accepted in accordance with Clause 3 herein.
"Cloud Services"	The products, functionality and applications in use as specified in the applicable Schedule, including Exchanges hosting and support of the products specified.
"Cloud Service Fee"	The monthly, quarterly or annual recurring fee for the ongoing use and support of the Cloud Services
"Cloud Set-Up Fees"	The upfront, one-off costs associated with the initial set up and installation of the Cloud Services
"Agreement"	Means this agreement including the appended Schedule(s) providing details of the products comprising the Cloud Services.
"Data Protection Law"	shall mean the Data Protection Act 2018 and any other legislation amending and/or repealing the same, the General Data Protection Regulation 2016/679/EC ("GDPR") and all relative European Union and Member State data protection legislation in force and as amended or replaced from time to time;
"Deliverables"	means the provision of the Cloud Services, or other components, specified or called for in this Agreement.
"Delivery Date"	The date on which the Works commence for delivery of the Cloud Services;
"Effective Date"	(i) for this Agreement the date specified above, (ii) for any order or Schedule agreed subsequent to the Effective Date of the Agreement the date of written acceptance by Exchange of the Customer's order or execution of any Schedule;
"Fault"	Any material defect, error, failure or deviation from proper function and/or specification, which occurs in the Cloud Services;
"Major Fault"	Cloud Services are entirely inaccessible or fail to operate for all users
"Minor Fault"	Cloud Services fail to operate for individual or some groups of users.
"Overage Charges"	Any charges for use of the Cloud Services which exceed the agreed usage limits, are not included with the Cloud Service Fee or are 'per-use' charges (see clause 6.6)
"Party"	Either Exchange or the Customer;
"Parties"	Both Exchange and the Customer;
"Personal Data"	Shall mean any information relating to an identified or identifiable natural person ('Data Subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to a name, an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity
"Premises"	The premises where the Cloud Services are to be or have been delivered as specified in the Schedule;
"Price(s)"	The price(s) set out in any Schedules as applicable, or, if not so specified, then at Exchanges current prices.
"Professional Services"	means any consulting, attendances, engineering, or custom services provided or performed by Exchange or its approved sub-contractors,
"Ready for Service"	The Cloud Services are fully installed and available for use;



"Ready for Service Date"	The date on which the Cloud Services became available for use as notified by Exchange to the Customer;
"Representative"	A director or other employee authorised by either Exchange or the Customer to act on its behalf;
"Response"	Exchange has acknowledged the reported fault and provided a reference or job number for the fault;
"Schedule"	Any Schedule appended hereto, such as Schedule A
"Software Licence"	The terms applicable to use of the Software as detailed in Clause 13
"Support"	The support activities detailed in Clause 19
"Support Days"	All days including, local bank and public holidays observed by Exchange, or as otherwise set out in the Schedule;
"Support Hours"	As specified in the Schedule;
"Term"	The number of months or years applicable to this Agreement as specified in Clause 19, comprising of the Initial Term and any Renewal Terms.
"Third Party Product"	Any hardware, software (in any form networks, supplies, goods, facilities or services) acquired by or licensed to the Customer from parties other than Exchange;
"Works"	Any work whether on Premises or remotely carried out by Exchange in relation to this Agreement to deliver and host the Cloud Services
"Working Days"	All days excluding local Bank and public holidays observed by Exchange.

2. PURPOSE OF THE AGREEMENT

- 2.1. Exchange supplies and supports the Cloud Services of which the Customer wishes to subscribe to, or licence in the case of software, for its internal use (and not for re-sale) at their specified Premises in the United Kingdom and /or Ireland; or at any other global location deemed necessary for which they were initially acquired and in accordance with the term herein.
- 2.2. The Parties agree that this Agreement shall be used for single or multiple purchases of the Cloud Services listed in the Schedules hereto. The Customer shall forward to Exchange either a completed version of the applicable Schedule (multiple purchases may be subject to separate Schedules) or specify the required information on a purchase order. This Agreement applies to these purchases even if not expressly referenced within the purchase order. All such purchases are subject to acceptance by Exchange in writing.
- 2.3. The Parties agree that these terms and conditions apply to all orders related to Cloud Services, for all the Customer's UK, Ireland and global locations, and any terms specified on any Customer issued order or documentation (and in particular any such terms printed on reverse of any order) shall have no force or effect unless Exchange expressly accept them in writing.

3. DELIVERY, INSTALLATION AND ACCEPTANCE OF CLOUD SERVICES

- 3.1. Subject to the performance by the Customer of all of its obligations hereunder Exchange shall carry out the Works to supply the Deliverables and enable the Cloud Services at the Premises.
- 3.2. Provided Exchange can supply the Deliverables in a straightforward manner without having to make any special arrangements (for example, if a crane or other special equipment is required or if extra staff needed to be provided to assist with delivery) then the Cloud Set-Up Fees include the cost of delivery. However, if Exchange has to make any special delivery arrangements Exchange reserves the right to make a reasonable additional charge and to recover all expenses incurred in relation to such delivery.
- 3.3. Exchange shall use its reasonable endeavours to supply and install the Deliverables and enable the Cloud Services on or before the relevant dates agreed between the Customer and Exchange.
- 3.4. If, due to any act or omission of the Customer (or Customer's representative), delivery and/or Installation of any Deliverable to enable Cloud Services is made impractical or impossible,
 - (ii) Exchange may immediately invoice the Customer any outstanding proportion of the Cloud Set-Up Fees and
 - (iii) the Customer shall additionally pay on demand all storage charges and other expenses so reasonably incurred by Exchange.



- 3.5. In respect of Cloud Services installed by Exchange the Customer may, at its discretion, participate in or observe all or part of any on site Works or testing.
- 3.6. Once the main installation of the Cloud Services infrastructure is complete and ready for configuration, Exchange shall thereafter confirm to the Customer that the Cloud Services are deemed Ready for Service. For the avoidance of doubt, the Ready for Service status shall not be affected by:
- (i) non-service affecting defects
 - (ii) the non-performance of any third-party equipment or service not supplied by Exchange or
 - (iii) any act or omission of the Customer.
- 3.7. Exchange reserves the right to not attend a customer location in situations of local civil unrest, commotion, disturbance, and riot or if current United Kingdom government advice has been given advising against travel to a country or region.

4. CUSTOMER RESPONSIBILITIES

- 4.1. Where the Customer is to provide Exchange with information in relation to any products or Customer limitations that may affect the Cloud Services (including specifications of interoperating equipment and software) then such information shall be complete and accurate and shall be supplied to Exchange within five (5) working days of the completion of the this Agreement and thereafter within five (5) working days of Exchanges request.
- 4.2. The Customer shall co-operate with Exchange to such extent as it is reasonable in relation to Exchanges performance of its obligations under this Agreement and shall:
- 4.2.1. provide Exchange, its employees, agents, servants and/or sub-contractors, with full, free and safe access to the Premises and all facilities reasonably necessary for the Works.
 - 4.2.2. ensure that prior to the Delivery Date the Premises are ready for the Works to take place and ensure that all the necessary permissions or consents relating to the Works and/or the Cloud Services have been obtained;
 - 4.2.3. be responsible for procuring the connection of the Cloud Services to their network and for obtaining all necessary agreements and consents from their network operator to bring the Cloud Services into service through connection to the Premises network, if applicable;
 - 4.2.4. promptly report to Exchange any defect or error in the Cloud Services of which the Customer becomes aware and promptly confirm the same in writing.
 - 4.2.5. provide to Exchange any further information which Exchange may reasonably require to fulfil its obligations hereunder;
 - 4.2.6. make available, on request by Exchange, an appropriate representative of the Customer during the Works and/or when required throughout the Term;
 - 4.2.7. ensure that only authorised callers contact the Exchange customer support centre and work with Exchange as required, and that at least one Customer representative, who has been trained as an authorised caller, is available during Support Hours;
 - 4.2.8. prior to the Delivery Date provide necessary telephone numbers and passwords to enable remote access to the Cloud Services and notify Exchange promptly of any changes made to such numbers or passwords;
 - 4.2.9. notify Exchange of any non-Exchange hardware and software changes that have a direct effect on the Cloud Services, at least fourteen (14) days prior to such change.

5. THIRD PARTY PRODUCTS

- 5.1. The Customer accepts all responsibility with the acquisition, use, warranty, interoperation, integration, and support of all Third Party Products even if Exchange assists the Customer to identify, evaluate or select them. Except as specifically agreed to in writing, Exchange is not responsible for, and expressly disclaims all liability for, performance or quality of Third Party Products or their suppliers, and their failure to meet the Customers expectations will not diminish the Customers obligations to Exchange. Any claim that the Customer may have in connection with any Third Party Products and any remedies for such claim will be against the supplier of such Third Party Products and not Exchange.



6. TERMS OF PAYMENT

Cloud Set-Up Fees

- 6.1. Exchanges standard payment terms are 100% payment with this Agreement unless stated otherwise in this Agreement or agreed in writing between Exchange and the Customer.
- 6.2. Where the Customer receives written credit approval from Exchange, as standard Exchange shall submit invoices to the Customer as follows:
- a) For any goods or hardware: One Hundred percent (100%) on the Agreement Date
 - b) Professional Services: Seventy-Five percent (75%) on the Delivery Date
 - c) Any remaining Deliverables and Professional Services on the Ready for Service Date or if the Cloud Services are not Ready for Service due to events outside of Exchanges control, then twenty (20) days after the Delivery Date.
- 6.3. for any additional purchases, which are separately priced, one hundred per cent (100%) of the Works shall be invoiced upon receipt of purchase order or acceptance of order by the Customer.

Cloud Services Fees

- 6.4. All Cloud Services Fees will be collected by direct debit on the 20th of the month (or the next working day if this falls on a weekend or public holiday) in which the next payment is due per agreed intervals (monthly, quarterly or annually). Prior to this, an invoice will generally be submitted by the 10th of the month (or the next working day if this falls on a weekend or public holiday) of which the direct debit payment is due. Cloud Services Fees will take into account any changes to the Customers Cloud Services configuration occurring during the previous payment period. Exchange shall reconcile changes to the configuration and invoice the Customer accordingly.
- 6.5. Payment for the Cloud Services will be payable monthly in advance
- 6.6. Any third-party subscription costs included in the Cloud Service Fees are subject to change in the event that third parties increase costs of their licences supplied to Exchange. Notification will be made prior to such changes with no less than 30 days' notice to be provided to the change taking place. The new Price(s) will apply to all orders placed and Agreements entered into after the effective date of the price change; for existing orders the new Price(s) will apply upon the commencement of the next renewal term which begins after the effective date of the Price change.
- 6.7. In the event that the Customer purchases additional Cloud Services during the Term, such additional Cloud Services must be coterminous with the Term and will be prorated for the remaining portion of the Term. Exchange will generate a prorated invoice to the Customer.

Overage Charges

- 6.8. Separate charges for overage amounts and per-use charges may also apply and the Customer agrees to pay these Overage Charges to Exchange if the Customer incurs them. It is Exchange's responsibility to inform Customer that these Overage Charges may apply based on product type, usage, or overage amounts that exceed the Customer's commitment. Certain services, such as audio and cloud recording plans purchased by Customer, can trigger these Overage Charges. Overage Charges are considered additional fees. No adjustment will be made, or credit or refund given, for usage that is less than the Customer's commitment. Exchange will issue a monthly invoice, invoiced in arrears, for the Overage Charges to the Customer and the Customer will be responsible for paying Exchange for such invoices within 30 days of receipt.

General

- 6.9. Without limiting our right in 19.7 of this Agreement, any failure to pay any amounts under this Agreement for five (5) calendar days following the due date, Exchange may terminate, suspend, or disconnect your Cloud Services immediately without prior notice.
- 6.10. Payment of all invoices shall be made within thirty (30) days of the date of the relevant invoice.
- 6.11. The payment made by the Customer to Exchange shall be for the Prices plus VAT in force at the date of the invoice.



- 6.12. Exchange may at its discretion charge interest (both before and after any judgement) on a daily basis on any payment which is overdue at a rate of 4% per annum above the base rate for the time being in force of the Bank of England and the Customer shall fully indemnify Exchange against all legal and other fees and expenses incurred by Exchange in relation to the collection of any overdue accounts.
- 6.13. All payments to be made by the Customer under this Agreement shall be made without any deduction or set off.

7. TRAINING

- 7.1. Where applicable, Exchange will make available to the Customer appropriate training courses to train the Customer's personnel on the use and operation of the Cloud Services. The specific form and content of the training shall be set out in Exchange's standard training course syllabus or as otherwise agreed in writing between the Parties. The Prices of such courses will be at Exchange's then current rates unless specified otherwise in a Schedule hereto.
- 7.2. Training will generally be provided at locations within the UK specified by Exchange. Exchange will not be responsible for any expenses incurred by or on behalf of anyone attending such training.
- 7.3. On, or before, the Delivery Date for the Cloud Services, Exchange will notify the Customer in writing of appropriate training courses and available dates. The Customer and Exchange will then promptly agree suitable courses, dates and numbers of attendees. All training ordered by Customer shall be completed within six (6) months from the Delivery Date of the Cloud Services.

8. CANCELLATION BY CUSTOMER

- 8.1. Upon completion of this Agreement or any acceptance of any additional orders of Cloud Services, it is deemed that the Cloud Services order is accepted in all parts and under the terms and conditions of this Agreement. Any cancellation of any initial or subsequent order following acceptance or order or Agreements(s) means that the Cloud Set-Up Fees will be payable in full, plus any cancellation charges for any committed and/or active Cloud Services (see clause 8.2).
- 8.2. for Cloud Services: Payment for the Cloud Services will be payable monthly in advance, unless an alternative payment frequency is agreed in writing between the Customer and Exchange, for the duration of the initial Term or any Renewal Term specified in Clause 19, unless either Party gives the other written notice of its intention not to renew at least ninety (90) calendar days prior to the expiration of any initial Term or Renewal Term. If notice is missed, or the Contract is cancelled prematurely, the whole of the outstanding payments for the remainder of the Term or Renewal Term shall immediately become due for payment.
- 8.3. Invoices appropriate to any cancellation charges submitted by Exchange to the Customer shall be paid in accordance with Clause 6 herein.

9. TITLE AND RISK OF LOSS

- 9.1. Title to the Cloud Services, including software, subscribed to hereunder shall at all times remain with Exchange.

10. WARRANTIES

- 10.1. Exchange warrants that it has the right to permit the Customer to use the Cloud Services in accordance with the licence terms of this Agreement and documentation provided shall be to a good professional standard consistent with that typically provided in the telecommunications industry.
- 10.2. The warranty periods ("Warranty Period(s)") shall be:
- 10.2.1. For Exchanges hosting infrastructure within their data centre, including any operating system, security certification, the partitioned data and provision of a virtual host server(s) for use by the Customer, for the duration of this Agreement.
 - 10.2.3. ninety (90) days from the date of enablement of Customer use Software; or
 - 10.2.5. ninety (90) days, for Deliverables, from the date Exchange advises Customer that those Deliverables are available for Customer's use.
- 10.3. Repair or replacement of the whole or any part of the Cloud Services will not extend its Warranty Period.
- 10.4. Provided always that the Customer complies with its obligations hereunder Exchange warrants that during the applicable Warranty Period:
- 10.4.1. the Cloud Services will be performed within a reasonable period of time by suitably qualified personnel using reasonable care and skill; and



- 10.4.2. the Cloud Services will be free from material defects in manufacturing and materials, in use and operation will confirm in all material respect to Exchange's applicable standard specifications for the Cloud Services in effect at the Delivery Date or, for Software, enablement, and have all the necessary approvals for connection to the UK public telephone network for the configuration supplied to the Customer for Installation.
- 10.4.3. the Deliverables shall perform in all material respects in accordance with their specifications and any standards set out in the applicable Schedule.
- 10.5. If during the applicable Warranty Period the Cloud Services fail to conform to the applicable warranty, the Customer shall promptly notify Exchange in writing and Exchange will at this discretion and during Support Hours use all reasonable endeavours to either:
 - 10.5.1. repair, replace or rectify any relevant defects in the Cloud Services ;
 - 10.5.3. take back the Cloud Services or part thereof, and refund to the Customer the Price paid less a reasonable amount for use and damage, or agree with the Customer a reduced price for the reduced functionality and refund any overpayment as applicable.
- 10.7. If the Customer requests Support outside of Support Hours, this will be charged at Exchange's then current rates.
- 10.8. Exchange does not warrant that the operation of the Cloud Services will be uninterrupted or error free or that the Cloud Services, or their use in accordance with Exchange's instructions or documentation, will prevent unauthorised use or Toll Fraud.
- 10.9. Exchange will not be liable under this Agreement (whether for breach of the above terms or otherwise) for any defect or other problem with, or in relation to the Cloud Services attributable to:
 - 10.9.1. use, operation or configuration of the Cloud Services other than in accordance with Exchange's written operating instructions, specifications, other documentation and procedures or any reasonable instructions given from time to time by Exchange and in accordance with good IT practices;
 - 10.9.2. alternations, modifications, repairs or any other work done on or in relation to the Cloud Services by anyone other than Exchange or an approved sub-contractor of Exchange or as otherwise expressly permitted by this Agreement;
 - 10.9.3. abuse, misuse or neglect of the Cloud Services;
 - 10.9.4. unauthorised Installation or enablement;
 - 10.9.5. abnormal or incorrect operating conditions of Force Majeure event detailed in Clause 15.1 (including interruption of or abnormality in the electricity supply, power failure or surges, pest damage or accident);
 - 10.9.6. any acts or omissions of the network operator or any failure or problem in relation to the network or modifications to the Cloud Services required by the public telecommunications authorities;
 - 10.9.7. any breach by the Customer of its obligations under this Agreement;
 - 10.9.8. any third party products or software being connected to or operated with the Cloud Services save where such connection or operation has been or is carried out by Exchange or expressly authorised and approved by Exchange in writing;
 - 10.9.9. problems caused by the reverse engineering or disassembling of the Cloud Services other than by Exchange;
 - 10.9.10. any other act or omission (whether accidental or deliberate) or other cause outside the control of Exchange, including, but not limited to, accidents vandalism, burglary, neglect, misuse acts of nature or disaster such as, but not limited to, floods, fire, winds, lightning and earthquakes; and
 - 10.9.11. relocation of the Cloud Services other than as permitted hereunder.
- 10.10. Although the Cloud Services supplied hereunder are designed to be reasonably secure from unauthorised intrusions or disclosure or loss of proprietary information it is not invulnerable to such intrusions, unauthorised use, fraud or "hacking. Exchange therefore makes no express or implied warranty against same. The Customer may order certain Software features, such as but not limited to Password Reset, Conference Mailbox, Skip Password and Monitor Mailbox, which, when enabled, could be improperly used in violation of laws regarding the interception, monitoring or overhearing of telephone communications. By ordering such features, the Customer assumes all responsibility for acquiring the proper and lawful use (and continued use) of such features and all liability for any improper or unlawful use of such features.
- 10.11. If the Customer chooses to connect any Cloud Services to the internet the Customer does so at its own risk and is strongly advised to take steps to minimise unauthorised access through any internet connection by the use of a suitable firewall or



other such protection. Exchange shall not have any liability whatsoever for any failure, harm or loss caused by, or related to any unauthorised access to the Cloud Services through an internet connection.

- 10.12. If any Cloud Services supplied under this Agreement support Telephony over Transmission Control Protocol (TCP/IP) facilities, Customers may experience certain compromises in performance, reliability and security, even when the Cloud Services perform as warranted. These compromises may become more acute if (a) the Customer fails to follow Exchange's recommendations for configuration, operation and use of the Cloud Services; (b) if the Customer uses the Cloud Services to communicate over facilities the Customer does not control (such as the public internet); or (c) if the Customer elects to disable network security devices in order to use the Cloud Services. The Customer acknowledges that it is aware of these risks and that it has determined that such risks are acceptable for the application of the Cloud Services. Customer also acknowledges that it is solely responsible for (i) ensuring that its networks and systems are adequately secured against unauthorised use, and (ii) backing up of its data and files.
- 10.13. with respect to third party products that are supplied with the Cloud Services, Exchange (to the extent permitted in its vendor arrangements) assigns to the Customer any warranties given by the vendor of such products.
- 10.14. The warranties set out in this Clause 10 are the Customer's exclusive remedies and Exchange's sole liability for breach of any warranty. Save as expressly set out in this Agreement, no conditions, warranties or other terms, expressed or implied, statutory or otherwise, apply to the Cloud Services all of which are expressly excluded. In particular no condition, warranty or other term shall apply to the effect that the Cloud Services are or will be satisfactory quality, fit for any particular purpose (whether made known to Exchange or not) or that they will operate to any particular standards of performance.

11. TIME

- 11.1. Exchange will use its reasonable endeavours to perform its obligations by the mutually agreed dates set out in the Schedule or, if no target date is specified for a particular obligation, within a reasonable time.
- 11.2. The Parties acknowledge that the operation of the Cloud Services is dependent on the services of the network operator (i.e. BT or similar) and that bringing the Cloud Services into service is dependent on network operator active service. Exchange shall thus not be liable to any delay caused or attributable to acts or omissions of the network operator.

12. CONFIDENTIAL INFORMATION

- 12.1. To the extent that confidential information is involved, it is agreed that the disclosing Party shall clearly identify such information as confidential information when furnishing it to the receiving Party, except when such information is clearly by its very nature confidential despite the fact that it may not be marked as such. In the case of information transmitted in writing, such identification will be made by marking such information clearly as confidential information; and in the case of information transmitted orally, the disclosing Party shall provide, within fifteen (15) Working Days after the disclosure, a written communication clearly identifying such confidential information it has provided. Any information properly designated in accordance with this paragraph is defined as "Confidential Information", for the purpose of this Agreement, All confidential Information shall be kept in confidence by the receiving Party, the measure of that confidence being that the receiving Party shall use the same degree of care, but no less than a reasonable degree of care, to prevent and avoid unauthorised disclosure thereof by its employees as the receiving Party uses to prevent and avoid such disclosure of its own information of a similar nature. All confidential Information may be used by the receiving Party solely for the purposes contemplated in this Agreement, the receiving Party shall not be liable for any disclosure of such Confidential Information if the information:
- 12.1.1. at the time of disclosure was proved to be in the receiving Party's possession before receipt from the disclosing Party;
 - 12.1.2. is a matter of public knowledge through no fault of the receiving Party;
 - 12.1.3. has been rightfully received by the receiving Party from a third party without a duty of confidentiality;
 - 12.1.4. has been disclosed by the disclosing Party to a third party without duty of confidentiality on the third party;
 - 12.1.5. is proved to have been independently developed by the receiving Party;
 - 12.1.6. has been disclosed under operation of law; or
 - 12.1.7. is disclosed by the receiving Party with the disclosing Party's prior written approval.
- 12.2. The obligations in this clause shall survive for a period of *Five (5)* years after the earlier of expiry or termination of this Agreement.

13. SOFTWARE LICENCE

- 13.1. Cloud Services delivered to the Customer pursuant to these terms and conditions may embody and include software in object code (machine-readable but not human-readable form). The software may be contained on disk drives, erasable programmable



read-only memories, programmable array logic devices, disk cartridges, or in other electronic or mechanical forms. Additional, use of the software can result in the production of human-readable features such as documentation, report formats, menus, audible prompts and tone sequences.

- 13.2. Exchange grants to the Customer, or will cause to be granted, a non-exclusive, personal, non-transferable, limited licence to use in object code form only, the number of copies of the software and related documentation which are provided by Exchange hereunder and in default of any express provision the Customer may use only one copy of the software and to limit the number of users to the number specified in the Schedule hereto, or the Customer's order, and to use such copies only on the Cloud Services on which it was originally installed by Exchange, or intended to be installed, at the Premises designated in the related Schedule hereof and solely for the purpose of operating the Cloud Services for the Customer's internal business and not for the benefit of any third party.
- 13.3. Exchange retains title to all the software and all intellectual property rights in the software and Cloud Services. No title to software or intellectual property rights are transferred to the Customer hereunder whatsoever.
- 13.4. Notwithstanding that Exchange permits the Customer to use the software on a temporary basis on back-up hardware when the original Cloud Service is inoperable the Customer may not copy the software or the human-readable features referred to in Clause 13.1 above for any purpose except for back-up or archival purposes where the Customer may make as many copies of the software as necessary for its lawful use of the software in accordance with this Agreement and all such copies must contain the same copyright notice and proprietary markings that the original software contains.
- 13.5. Use of software on multiple processors is expressly prohibited unless otherwise agreed in writing by Exchange, or unless (and to the extent) it is used on Cloud Services which itself contains multiple processors.
- 13.6. The Customer must separately order and licence COD Software. Such software may only be enabled by Exchange and, as a condition of Exchange's Software Licence in relation to COD Software, the Customer shall give Exchange remote, system-level access to the Customer's Cloud Services at a mutually agreeable time to enable such COD Software, the Customer may not enable such features and capacities, or attempt or permit any third party to do so.
- 13.7. If the terms of this Agreement differ from the terms of any licence agreement packaged with third party software supplied hereunder, the terms of the licence agreement applicable to the packaged third party software (such as, but not limited to, shrink wrapped, click wrapped or click through licences) shall govern.
- 13.8. If any updates, upgrades, amended or different versions of the software are supplied to the Customer during subsistence of this Agreement then, save as may be otherwise agreed between the Parties, they shall be subject to all of the terms of this Agreement.
- 13.9. Any breach of the terms of this Clause 13 immediately and automatically terminates the Software Licence and Exchange may seek any remedy available hereunder, or in law, equity or otherwise.
- 13.10. On termination of this Agreement or the Software Licence contained herein all copies of the software shall either be returned to Exchange or, at Exchange's option, destroyed and the Customer shall promptly provide Exchange with written notice of such destruction.
- 13.11. Customer agrees that Exchange may, at its discretion, electronically inspect and audit the configuration of Customer's Cloud Services configurations for compliance with the terms of this Agreement and, in particular this Software Licence as it relates to COD Software. Such inspection or audit may occur at the time of enablement of any separately licenced software feature or capability, such as incremental capacity for COD Software, and once each calendar year, upon three (3) business days notice to Customer from Exchange. Customer agrees to co-operate with Exchange in conducting such audits including making remote access to Customer's Cloud Services available for such purpose.
- 13.12. The Customer will ensure that its employees and users of all software licenced under this Agreement comply with the terms of this Software Licence.

14. FORCE MAJEURE

- 14.1 Either Party's performance of any part of this Agreement, exclusive of payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by the acts or omissions of the other party or the Customer's network or communications services provider, explosion, fire, act of God, acts of nature including but not limited to flood, fire, earthquake and lightning, the performance or availability of communications service or network facilities, or any other cause (Whether similar or dissimilar to those listed), beyond the reasonable control of that Party (collectively referred to as "Force Majeure" conditions).



- 14.2. If any such Force Majeure condition occurs, the non-performing Party shall make reasonable efforts to notify the other Party of the nature of any such condition and the extent of the delay, and shall make reasonable, good faith efforts to resume performance as soon as possible.
- 14.3. If the cumulative delay due to Force Majeure conditions exceed forty (40) days in any ninety (90) day period either Party may terminate this Agreement or Schedules or order(s) referring hereto on seven (7) days written notice to the other Party in accordance with Clause 18 herein.

15. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 15.1. Exchange will defend at its expense any action brought against the Customer to the extent based upon the claim that the use or possession of the Cloud Services or any part thereof constitutes infringement of any United Kingdom patent, copyright, design right or trade mark and shall pay any settlements or final judgements to the extent based thereon, provided the Customer notifies Exchange immediately in writing of the existence or threat of such claim, suit or proceeding and gives Exchange sole control of any such action or settlement negotiations, and at Exchange's expense (except the value of time of the Exchange Customer's employees, advisors and representatives) gives adequate information and otherwise reasonably co-operates with Exchange.
- 15.2. If the Cloud Services or any part thereof becomes, or in the opinion of Exchange may become, subject to any claim of infringement of any intellectual property right, Exchange may, at its option:
- 15.2.1. procure for the Customer the right to use the Cloud Services;
 - 15.2.2. replace or modify the Cloud Services, or part thereof provided that the replacement or modified Cloud Service, is substantially equivalent in specification and functionality; or
 - 15.2.3. remove the Cloud Services, or part thereof, and refund the aggregate payments paid therefore to Exchange less a reasonable sum for use and damage;
- Provided that in the event that Exchange does any of the foregoing and this is sufficient avoid or remove the basis for the claim concerned then Exchange shall have no further liability under the indemnity in Clause 15.1.
- 15.3. Exchange assumes no liability for:
- 15.3.1. infringement of any intellectual property right resulting from the completed system of the Customer into which the Cloud Services is incorporated;
 - 15.3.2. any assembly, circuit, combination, method or process of the Customer in which any Cloud Service or part thereof may be used;
 - 15.3.3. any compliance with the Customer's specifications or instructions; and
 - 15.3.4. the modification of the Cloud Services, or any part thereof, unless such modification was made by Exchange or with the written approval of Exchange.
- 15.4. The foregoing states the sole and exclusive liability of Exchange, and the exclusive remedy of the Customer, for intellectual property rights infringement or claims of infringement.

16. REPLACEMENT PRODUCTS

- 16.1. Exchange may in order to comply with any of its obligations under this Agreement replace the Cloud Services or any part thereof at any time, provided the replacement Cloud Services thereof are of substantially equivalent standard and functionality to those replaced.

17. LIMITATION OF LIABILITY

- 17.1. Exchange does not limit its liability (if any) in respect of any of the following:
- 17.1.1. fraud,
 - 17.1.2. the death of, or personal injury to, any person caused by negligence,
 - 17.1.3. under section 12 of the Sale of Goods Act 1979,
 - 17.1.4. under section 2 of the Supply of Goods and Services Act 1982,
 - 17.1.5. under Part 1 of the Consumer Protection Act 1987,
 - 17.1.6. the intellectual property rights indemnity specified in Clause 15.
- 17.2. Exchange shall indemnify the Customer for loss or damage to the Customer's tangible property, caused either by;



- 17.2.1. defects in the Cloud Services resulting from Exchange's negligence, or
- 17.2.2. the negligence of its employees, up to a maximum of the greater of £1,000,000 (one million pounds) or the amount, if higher, actually paid by the Customer to Exchange hereunder during the previous 12 months, per event or series of connected events. For the avoidance of doubt data does not constitute tangible property.
- 17.3. Subject to clause 17.1 Exchange does not accept any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:
- (a) Loss of profits
 - (b) loss of sales or turnover;
 - (c) loss of or damage to reputation;
 - (d) loss of contracts;
 - (e) loss of customers;
 - (f) loss of, or loss of use of, any software or data;
 - (g) loss of use of any computer or other equipment or plant;
 - (h) wasted management or other staff time;
 - (i) losses or liabilities under or in relation to any other contract;
 - (j) indirect loss or damage;
 - (k) consequential loss or damage
 - (l) loss(s) directly or indirectly due to Toll Fraud; or
 - (m) special loss or damage.
- and for the purpose of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 17.4. Excluding Clause 17.1 and subject to Clauses 17.2 and 17.3 above, Exchange's liability whether in contract, tort or otherwise, howsoever arising out or in connection with this Agreement shall be limited to one hundred percent (100%) of the total price for the Cloud Services under the this Agreement concerned, for any event or series of connected events. For the purpose of this Clause 17, "Exchange" includes its employees, subcontracts and suppliers.

18. TERM, TERMINATION AND SUPENSION

- 18.1. This Agreement shall commence on the Effective Date and will remain in force for an initial term of **XXXX (X)** years ("Initial Term") unless another multi-year or fixed term is specified in the applicable Schedule. On its expiry the Agreement shall be automatically renewed for the same duration of the Initial Term as specified above ("Renewal Term"), at Exchanges then current charges unless either party gives the other written notice of its intention not to renew at least ninety (90) calendar days prior to the expiration of the Initial Term or any Renewal Term. If notice is missed or the Agreement is cancelled prematurely, the whole of the outstanding payments for the remainder of the Term due to Exchange shall immediately become due for payment.
- 18.2. Provided that the Customer submits the completed Schedule, or Customer order, in accordance with the terms herein (unless otherwise specified in writing by Exchange), the Cloud Services will commence on the Ready For Service Date and continue for the duration of the Term.
- 18.3. In the event that either Party materially breaches, or repeatedly breaches any terms of this Agreement the other Party may terminate this Agreement and/or applicable Purchase Agreement or Services Agreement forthwith by written notice, provided it first gives written notice of the breach and the breaching Party fails to cure such breach Within thirty (30) days of receipt of such notice; provided, however, either Party's breach of its obligations under Clause 6 (Terms of Payment), Clause 12 (Confidential Information) or Clause 13, (Software Licence) constitutes a default for which no notice or cure period is required.
- 18.4. Either Party may terminate this Agreement and/or any applicable Purchase Agreement or Services Agreement on seven (7) days written notice if the cumulative delay due to Force Majeure conditions exceeds the periods specified Clause 14.3.
- 18.5. Either Party may terminate this Agreement and/or any applicable Purchase Agreement or Services Agreement with immediate effect in the event that the other Party ceases to do business, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, or takes or suffers any similar action in consequence of debt, or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction.
- 18.6. In the event of any breach by the Customer of any of its obligations under this Agreement and/or applicable Purchase Agreement or Services Agreement (including any obligations as to payment), Exchange may (without prejudice to any other right or remedy available to it) have the right to suspend performance of its obligations hereunder (including the correction of Faults) until the Customer's obligations have been fully and properly performed. Such suspension shall not entitle the Customer to terminate this Agreement or applicable Purchase Agreement or Services Agreement and shall not suspend or alleviate any



of the Customers obligations hereunder. The suspension may continue for as long as the Customer is in breach of this Agreement and may be ceased and renewed at Exchange's discretion.

- 18.7. Rights of termination under this Clause 18 shall be without prejudice to any accrued rights or liabilities of either Party to the other or any other rights of termination whether subsisting by virtue of the Agreement or otherwise (including rights of termination arising at common law) and such termination shall not be taken to waive the right to assert or exercise any such rights.

19. SUPPORT OF CLOUD SERVICES

- 19.1. This Agreement applies to the Cloud Services set out in the applicable Schedule inclusive of any modifications and/or updates which are provided by Exchange during subsistence of this Agreement. Cloud Services include preventative maintenance as deemed appropriate by Exchange and remedial maintenance, including replacement Parts required, where applicable (Support).

Initial Procedure in Relation To Faults

- 19.2. The Customer shall:
- 19.2.1 promptly inform Exchange of any Fault of which it becomes aware and shall provide to Exchange such further information relating to that Fault as is available to the Customer and which Exchange may reasonably request in order to enable it to perform its obligations under this Agreement;
 - 19.2.2 provide to Exchange all facilities and services reasonably required by Exchange to enable it to perform its obligations hereunder including computer runs, printouts, data preparation, telephone and fax facilities, and modem links;
 - 19.2.3 use all reasonable endeavours to follow the procedure agreed between the Parties for each Fault and shall complete any relevant documentation in relation to each Fault including descriptions detailing how the Fault can be replicated;
 - 19.2.4 keep such records as Exchange shall reasonably require of the Customer's actions in respect of the maintenance history of the Cloud Services (such as but not limited to preventative maintenance and first line support where provided by the Customer), and allow Exchange to inspect and take copies of such records during Support Hours; and
 - 19.2.5 provide Exchange with or allow Exchange to make and remove copies of the Software in use by the Customer and any relevant date.

Fault Reporting Line

- 19.3 Exchange shall provide a telephone fault reporting line during Support Hours to the Customer in order to provide assistance in relation to the identification and correction of any Faults. The service shall be obtained by telephoning the number known by Exchange to the Customer from time to time.

19.4 Remote Access

- 19.4.1. Provision of Support is conditional on the permanent installation and connection of facilities to allow remote access to the Cloud Services by Exchange. Exchange shall provide and maintain the necessary equipment and the Customer shall provide, maintain and pay for, the dedicated telephone connection. The Customer also agrees to allow Exchange to connect other items of equipment to the Cloud Services, such as a tracker, for diagnostic purposes.
- 19.4.2. Remote access shall be password protected with such passwords being changed by Exchange at random times to increase/maintain security also immediately after an engineer or other such person who knows such passwords leave the employ of Exchange. On written request from the Customer the Customer may take full responsibility for the allocation, management and control of access passwords and changes thereto provided that Exchange is promptly advised of the procedures to be used and passwords so issued.
- 19.4.3 The Customer shall not disconnect such facilities or otherwise impede or prevent such remote access without the consent of Exchange. If the Customer disables the remote access or items of diagnostic equipment or the Parties specify in the applicable Schedule that the tracker will be disabled until remote access is required by Exchange for Support activities, then remote access will be enabled by persons and at times mutually agreed in writing by the Parties. It shall remain enabled for the duration of the Support activity and any Response times specified by the Parties in the applicable Schedule be extended by the period Exchange is, or was, unable to remotely access the Customer's System for any reason including, but not limited to, delays caused due to the unavailability of passwords issued or advised to Exchange by the Customer.

19.5 Correction of Faults

- 19.5.1. Exchange will use reasonable efforts to resolve any Fault during Support Hours which is either notified to it by the Customer or communicated to it by any automatic alarm system which may be incorporated in the Cloud Services by either supplying such information and instructions to the Customer, or making such corrections and adjustments to and replacing the Cloud Services, or a part thereof as may be reasonably necessary to restore the Cloud Services to its full and proper function and specification.



- 19.5.2. Exchange will use its reasonable endeavours to give an initial Response to requests for Support as specified in the applicable Schedule.
- 19.5.3. Exchange may, in order to comply with any of its obligations under this Agreement, replace the Cloud Services or any part thereof provided that the replacement Cloud Service or part shall be similar in all material respects in specification and performance to the original.
- 19.5.4. Exchange may respond to and (where appropriate) correct Faults by means of telephone advice, remote access, and attendance of Exchange representatives at any Premises or by any other reasonable means.
- 19.5.5. Exchange shall not be obliged to provide Support outside of Support Hours but may do so in its absolute discretions and if the Customer so requests Exchange to do so. If Exchange does (at the Customer's request) provide Support outside Support Hours then Exchange shall be entitled to charge the Customer for all such service at Exchange's then current price for such Support and recover from the Customer all travel and subsistence expenses reasonably incurred by Exchange in the provision of such Support.

19.6 Updates and Enhancements

- 19.6.1. In the event that Exchange makes any update available for release at any time during subsistence of this Agreement then provided the Customer is not in breach of this Agreement Exchange may at its discretion provide a copy of such update to the Customer without charge and install same on the Cloud Services.
- 19.6.2. If any update is supplied to the Customer, the Customer shall promptly allow Exchange to install the update on each copy of the software in use by the Customer.
- 19.6.3. If the Customer does not permit the installation of an update onto the Cloud Services within thirty (30) days from the date the update was provided, (including, where necessary, a temporary shutdown of the Cloud Services to allow the update to be installed), and where such update remedies a Fault previously registered with Exchange, or which the Customer would not have suffered had the update been so installed, then Exchange shall not be obligated to remedy the Fault through other means and any service levels or Response times applicable to the Fault shall not apply.

Upgrades

- 19.7. From time to time Exchange may, at its discretion, introduce or recommend upgrades, which will be made available to the Customer in accordance with Exchanges then current prices.

Alterations to Products

- 19.8. The Customer may request configuration changes to the Cloud Services provided always that the changes are within the limits specified in the documentation provided by Exchange to the Customer. Customer shall send the request to Exchange in writing detailing changes or alterations required on the Cloud Services, and reasons. Exchange shall advise Customer of any impact on the Cloud Services, including any costs, and whether it is possible and acceptable to Exchange. Customer may not make any changes without first obtaining Exchanges prior agreement in writing. If the requested alteration is either not possible, or not acceptable, Exchange will notify the Customer and Exchanges decision is final.

20. EXCEPTIONS FROM CLOUD SERVICES

- 20.2. The Services provided under a Services Agreement exclude:
 - 20.2.1. the provision of services other than those specified in the applicable Schedule at or to the Premises outside Support Hours;
 - 20.2.2. the repair or correction of any third party or other software, hardware or other items;
 - 20.2.3. the correction of Faults occurring directly or indirectly from the causes detailed in Clause 10.9.

21. ASSIGNMENT

- 21.1. Neither party may assign, sub-contract or transfer this Agreement, or any rights and obligations resulting from this Agreement, in whole or in part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing:
 - 21.1.1. Exchange may assign this Agreement in whole or in part to any of its present or future affiliates, subsidiaries, successors, distributors or to any entity to which Exchange may sell, transfer, convey, assign or lease all, part or substantially all of the assets or properties used in connection with this Agreement; and
 - 21.1.2. Exchange may subcontract any or all of the work to be performed by it under the Agreement to an authorised Exchange service provider, distributor or other competent party, but shall retain the responsibility for the subcontracted work; and



- 21.1.3. either Party may, without consent of the other, but on prior written notice to the other, assign the whole (but not a part) of this Agreement to any entity which acquires the whole or substantially all of the Party's business or assets, or assign, delegate or sub-contract the whole of any part of this Agreement to any of its Subsidiaries, any Holding Company or any other Subsidiary or Holding Company, provided that any such Subsidiary or Holding Company is of sufficient substance to meet in full the assigning, delegating or sub-contracting Party's obligations. In this clause, the words "Subsidiary" and "Holding Company" have the meanings given to them by section 736 of the Companies Act 1985 (as amended).
- 21.2. This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any right of any persons to enforce the terms of this Agreement pursuant to the Contracts (Right of Third Parties Act) 1999 are excluded.
- 21.3. If the Customer wishes to transfer the rights to use the Cloud Services to another end-user then subject to Exchange's prior written consent, such consent not to be unreasonably withheld, the Customer may transfer the right to use the Cloud Services to that end-user provided that:
- 21.3.1. any assignment by the Customer of this Agreement or the benefit thereof (or any part thereof) shall not relieve the Customer of any of its liabilities under this Agreement;
- 21.3.2. prior to such transfer the new end-user confirms in writing that it will abide by and observe the restrictions and obligations relating to the terms of the Cloud Services and Software Licence herein; and
- 21.3.3. Exchange shall be entitled to make a reasonable charge for the administration of such transfer.

22. DATA PROTECTION

- 22.1 Each of the parties warrant that they will at all times comply with Data Protection Law in connection with the performance of this Agreement.
- 22.2 For the purposes of this Agreement, the Customer is the sole controller of any Personal Data processed in connection with the provision of services by Exchange.
- 22.3 Exchange warrants that it shall only undertake processing of Personal Data in connection with the provision of the Services under the Agreement in accordance with the processor data agreement forming Schedule B of this Agreement.
- 22.4 Exchange may share customer Personal Data internally as appropriate, including with members of the business area relevant to the services which Exchange is to provide, or the activities undertaken. Customer Personal Data may also be shared with other "Exchange" companies: - Exchange Communications Group Ltd, Exchange Communications Installations Ltd; Exchange Communications Support Ltd; Exchange Communications Managed Services Ltd.
- 22.5 Exchange will also share your data as required by law to administer the working relationship that Exchange has with the Customer.
- 22.6 Exchange also shares your data with third parties, including sub-contractors engaged by Exchange to provide telecommunications services on behalf of Exchange and third party service providers that process data on its behalf in connection with invoicing services and IT services

23. ENTIRE AGREEMENT

- 23.1. Each of the Parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, understanding, warranty or other assurance given or made by or on behalf of the other Party prior to this Agreement (except those set out in this Agreement and the documents referred to herein) and each of the Parties waives all remedies which, but for this Clause 23, might otherwise be available to it in respect of any such representation, warranty or other assurance.

24. NOTICE AND CONSENTS

- 24.1. All notices, agreements and consents under this Agreement shall either be:
- * in writing and shall be sent to the address of the recipient set out in this Agreement or to such other address as either Party shall notify to the other in accordance with this Clause 24. Any letter may be delivered by hand, first class pre-paid letter, registered post or recorded delivery and shall be deemed to be delivered if sent by hand when delivered and if by first class post 48 hours after posting, or;
 - * by email to or from Contracts@exchangecommunications.co.uk

25. WAIVER OF REMEDIES

- 25.1. If either Party fails to enforce any right or remedy available to it under this Agreement, that failure shall not be construed as a waiver of any right or remedy or otherwise restrict the rights of that Party hereunder.



26. PRODUCTS AND SUPPORT CHANGES AND MODIFICATIONS

- 26.1 Exchange reserves the right at any time to make substitutions and modifications to the Cloud Services, and update, amend or correct specifications and documentation provided hereunder provided that such change(s) do not have a material adverse effect on the same or are required for safety, legal or regulatory reasons.

27. INDEPENDENT CONTRACTORS

- 27.1 The relationship of the Parties shall be as independent contractors, and not as partners, joint ventures, employees, or agents of each other. Neither Party has any authority to bind the other to any contractual or other commitments, or to make any representation to the contrary. Each party is wholly responsible for withholding and payment of all income and payroll taxes with respect to its employees. This Agreement is not intended to provide any third parties with any rights or claims whatsoever.

28. NON-SOLICITATION

- 28.1 Customer shall not, without the prior written consent of Exchange, during the term of this Agreement, including any renewal period or within six (6) months of termination of this Agreement, solicit for employment the employees of Exchange. Notwithstanding the foregoing, Customer shall not be restricted from placing employment advertising in trade or general media or from using recruiters, provided such advertising and recruiters do not target the employees of Exchange.

29. GENERAL TERMS

- 29.1. This Agreement shall be binding on both Parties upon approval, acceptance and execution by an authorised representative of Exchange and an authorised representative of the Customer. Exchange and the Customer each represent that the individual signing this Agreement on its behalf has the power and authority to enter into this Agreement and that this Agreement constitutes a valid and binding obligation of each Party.
- 29.2. In the event of any ambiguity or conflict created by these terms or any of the referenced documents these terms and conditions shall prevail unless amended by special terms stated both on the face of the Customer's order (and on a completed Schedule) and on Exchange's order acknowledgement.
- 29.3. The Parties may agree from time to time to vary Schedules hereto by adding or amending the Cloud Services to be provided hereunder or amending the Premises. If such a variation is made, then it shall not be effective unless it is in writing and signed by a Representative of each Party. The definitions of "Cloud Services" and "Premises" in the Agreement shall be deemed to include any relevant changes made by such a variation.
- 29.4. If any provision of this Agreement is ruled unenforceable, it shall be enforced to the extent permissible by law, and the remainder of the Agreement shall remain in full force and effect.
- 29.5. The provisions of Clause 12(Confidential Information), 13 (Software Licence), 15(Intellectual Property Rights Indemnity), 17 (Limitation of Liability), and 21 (Assignment) will survive the expiration or termination of this Agreement and subsist indefinitely unless a period is specified in the actual Clause.
- 29.6. Reference to clause numbers and Schedules shall be to those of this Agreement and paragraph headings in this Agreement are for convenience only and shall not affect its interpretation.
- 29.7. Exchange may, without the Customer's prior consent, disclose or advertise the existence of this Agreement or any transaction made subject to its term, for the purpose of marketing the Exchange's products.
- 29.8. This Agreement will be construed in accordance with and governed by the laws of England and the Parties submit to the exclusive jurisdiction of the English Courts.



AS WITNESS the hands of the duly authorised representatives of the Parties on the date stated at the beginning of this agreement

SIGNED by: _____

(Duly authorised to sign for and on behalf of)

XXXXXXX

(Print)

Name : _____ Date : _____

SIGNED by: _____

(Duly authorised to sign for and on behalf of)

EXCHANGE COMMUNICATIONS INSTALLATIONS LIMITED

(Print)

Name: _____ Date: _____



SCHEDULE A – Cloud Services Agreement

This Schedule Relates to Agreement No. E**** between Exchange and XXXXXXX

CUSTOMER INFORMATION	
Customer:	Invoice Address: (if different to Equipment Location)

Cloud Services Solution:			
Hosted Solution	1		
		-	
		-	
Cover Level: SILVER 1			
Monday – Friday	Saturday	Sunday	Response Times
09:00 – 17:00	n/a	n/a	4hrs – Major Fault 16hrs – Minor Fault

CHARGES	
Cloud Set-Up Fee is £XXXXXXX as per offer quote ref XXXXXX dated XX/XX/XX, to be paid per Clause 6.	
Cloud Services Fee is £XXXX per month for which the Customer will make each payment in advance, as per Clause 6. All prices exclude VAT. Cloud Services shall commence on the Ready for Service Date, unless specified otherwise.	
Products to be Supported	
All as listed above and any attachments and SOW's herein and software forming part and function on the system.	

By their signature on this Schedule, the authorised representatives of the Parties agree that the terms and conditions (Supplied by Exchange Communications Support Ltd) of Agreement Number E**** including those of this Schedule, are hereby incorporated by reference as though set forth in full herein.

EXCHANGE	CUSTOMER
Signature	Signature
Name	Name
Title	Title
Date	Date



SCHEDULE B – Data Agreement

AGREEMENT between

- (1) XXXXXXXX (including address & Co Number!!) (the "Controller"); and
- (2) Exchange Communications Installations Limited (SC499057), having its registered office at Exchange House, 11-17 Kerr Street, Kirkintilloch, Glasgow, G66 1LF (the "Processor").

WHEREAS the Controller processes Personal Data in connection with its business activities; and whereas the Controller has engaged the services of the Processor to provide services on its behalf and process Personal Data in terms of the Contract, the parties do hereby agree as follows:-

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement all words and phrases shall have the meanings as follows:-

"Contract" shall mean the foregoing Agreement between the parties for provision of sales, service and support provided by the Processor;

"Data Protection Law" shall mean the Data Protection Act 2018 and any other legislation amending and/or repealing the same, the General Data Protection Regulation 2016/679/EC ("GDPR") and all relative European Union and Member State data protection legislation in force and as amended or replaced from time to time;

"National Law" shall mean the law of the Member State in which the Processor is established;

"Personal Data" shall mean any information relating to an identified or identifiable natural person ('Data Subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to a name, an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

"Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

"Processing" shall mean any operation or set of operations which is performed upon personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

"Sub-contract" and **"Sub-contracting"** shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and "Sub Contractor" shall mean the party to whom the obligations are subcontracted; and

"Technical and Organisational Security Measures" shall mean all reasonable measures to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed, and against all other unlawful forms of Processing.

2. NATURE OF PROCESSING

2.1 The Parties hereby acknowledge and agree that the following is an accurate description of the Processing of data to be carried out by the Parties:-

Subject matter and duration of Processing

Contact Details held for the Term of contract

Nature and purpose of Processing

To allow fulfillment of contract EXXXX

Types of Personal Data to be processed

Contact name, Work phone number, Address and work email address.



Categories of Data Subject to whom Personal Data relates
Customer Contacts

Obligations and rights of the Controller

To notify the processor of any contact detail change.

To request contact details be removed from all exchange systems.

3. CONSIDERATION

- 3.1 In consideration of the Controller engaging the services of the Processor to process Personal Data on its behalf, the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement and ensure compliance with Data Protection Law and, in particular, process all Personal Data on behalf of the Controller only for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by the Controller from time to time, and shall not modify or amend Personal Data unless specifically authorised in writing by the Controller.

4. SECURITY OBLIGATIONS OF THE PROCESSOR

- 4.1 The Processor shall only process Personal Data on behalf of the Controller as expressly authorised in writing by the Controller.
- 4.2 The Processor shall take appropriate Technical and Organisational Security Measures as are required under its own National Law to protect Personal Data processed by the Processor on behalf of the Controller against unlawful forms of processing.
- 4.3 The Processor shall ensure that any system on which the Processor or any Approved Sub-Contractor holds Personal Data, including backup data, is secure and ensures complete data integrity in accordance with the data security requirements and with good industry practice.
The Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

Encryption and pseudonymisation;
Penetration testing;
Information Security Management Systems;
Physical Security;
Access Control;
Security and Privacy Enhancing Technologies;
Awareness, training and security checks in relation to personnel;
Incident/Response Management/Business Continuity; and
Audit Controls/Due Diligence.

5. CONFIDENTIALITY

- 5.1 The Processor shall maintain the Personal Data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor shall, save with the prior written consent of the Controller, not disclose any Personal Data supplied to the Processor by, for, or on behalf of, the Controller to any third party.
- 5.2 The Processor shall not make any use of any Personal Data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.
- 5.3 Nothing in this Agreement shall prevent either party from complying with any legal obligation imposed on it by a regulator or court. The parties shall, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of Personal Data.

6. PROCESSOR OBLIGATIONS

- 6.1 The Processor shall:-
- 6.1.1 only process or otherwise transfer Personal Data in or to any country out with the European Economic or international organisation Area with the Controller's prior written consent and where both a data transfer risk assessment has been carried out and the appropriate EU model clauses have been completed and signed by the appropriate parties prior to any such data transfer taking place;
- 6.1.2 inform the Controller immediately if, in its opinion, an instruction from the Controller infringes any obligation under Data Protection Law.
- 6.1.3 maintain written records, including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Controller containing the information set out in Article 30(2) of the GDPR.
- 6.1.4 provide the Controller with details of the Processor's Data Protection Officer or other designated individual with responsibility for data protection.



- 6.1.5 ensure that all Processor personnel receive adequate training on the Data Protection Law and in the care and handling of Personal Data;
- 6.1.6 unless prohibited by law, notify the Controller immediately (and in any event within 24 hours of becoming aware of same) if it considers, in its opinion (acting reasonably), that it is required by law to act other than in accordance with the instructions of the Controller;
- 6.1.7 promptly deal with any enquiry from the Controller or any of its affiliates which relate to the Processing of Personal Data by the Processor or by approved Sub-Contractors;
- 6.1.8 procure that only those authorised to process Personal Data on behalf of the Processor and approved Sub-Contractors that need to have access to Personal Data are granted access to such Personal Data;
- 6.1.9 take all reasonable steps to ensure the reliability and integrity of anyone who is authorised by the Processor who shall have access to the Personal Data and shall ensure that any Processor personnel and approved Sub-Contractors who have access to such Personal Data shall comply with the provisions of Data Protection Law and this Agreement, and that appropriate statutory duties of confidentiality exist or appropriate contractually binding confidentiality undertakings have been entered into with those authorised by the Processor who have access to Personal Data and Sub-Contractors which are no less onerous than those set out in this Agreement;
- 6.1.10 notify the Controller of any actual or suspected Personal Data Breach including any unauthorised or accidental disclosure, loss, alteration unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed made by the Processor or Approved Sub-Contractors, immediately on becoming aware of such;
- 6.1.11 promptly provide to the Controller (and in any event within 24 hours) after any of the following events, all information in its possession concerning:- unauthorised or accidental disclosure of, or access to Personal Data made by Processor personnel or Approved Sub-Contractors; or any actual, suspected Personal Data breach or breach of Data Protection Law and following such a notification support the Controller to implement any measures necessary to restore the security of compromised Personal Data;
- 6.1.12 provide all reasonable assistance, including by such Technical and Organisational Measures as may be required by the Controller, to comply with its obligations concerning Personal Data including any subject access request and/or responding to any other data subject request made; reporting requirements for personal data breaches; data protection impact assessments or investigation or assessment of Processing initiated by the Information Commissioner in respect of Personal Data as soon as possible but in any event within 3 working days of receipt of the request by the Controller;
- 6.1.13 allow the Controller, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Agreement and contribute as is reasonable to those audits and inspections; and
- 6.1.14 notify the Controller within 2 working days if it or an approved Sub-contractor receives a data subject request or supervisory authority correspondence and forward same to the Controller. Any data subject request made to the Processor or approved Sub-contractor shall be dealt with by the Controller.

7. SUB-CONTRACTING

- 7.1 The Processor shall be permitted to appoint Sub-Contractors, and to disclose Personal Data to such Sub-Contractors for Processing in accordance with this Agreement provided always that:
 - 7.1.1 the Processor provides the Controller with full details of the proposed Sub-contractor (including the results of the due diligence undertaken in accordance with this Agreement) before its appointment;
 - 7.1.2 the Processor undertakes thorough due diligence on the proposed Sub-contractor, including a risk assessment of the information governance related practices and processes of the Sub-contractor, which will be used by the Processor to inform any decision on appointing the proposed Sub-contractor;
 - 7.1.3 the sub-contract is on terms which are substantially the same as, but no less onerous than, the terms of this Agreement;
 - 7.1.4 the Processor will immediately notify the Controller in the event that it becomes aware of any breach of Data Protection Law by any of the Approved Sub-Contractors in connection with this Agreement; and
 - 7.1.5 the Sub-contractor's right to Process Personal Data terminates automatically on expiry or termination of the Contract for whatever reason.
- 7.2 The Processor shall comply with, and shall procure that its approved Sub-Contractors shall comply with the provisions of Data Protection Law in relation to all Personal Data that is Processed by it in connection with this Agreement.



- 7.3 The Processor shall obtain and maintain and shall procure that its approved Sub-Contractors shall obtain and maintain, all necessary registrations and notifications that the Processor and each of the approved Sub-Contractors is obliged to obtain and maintain in accordance with Data Protection Law in respect of providing the Services.
- 7.4 The Processor shall not, and shall procure that any approved Sub-Contractor and Processor personnel shall not, disclose any Personal Data to any third party (including for the avoidance of doubt the Data Subject but excluding any approved Sub-Contractor), in any circumstances other than at the Controller's specific written request, or where required to do so by law (provided that the Processor shall use reasonable endeavours to notify the Controller in advance of such disclosure or immediately thereafter, unless prohibited by law).
- 7.5 The Processor shall procure that any approved Sub-Contractor takes such Technical and Organisational Security Measures as are required under its own National Law to protect Personal Data processed by the Processor on behalf of the Controller against unlawful forms of processing.
- 7.6 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement and the Processor shall remain liable for the acts or omissions of its agents and approved Sub-Contractors in relation to Personal Data Processed under this Agreement.
- 7.7 The Processor shall inform the Controller in writing of any intended changes regarding any Sub-contractor and give the Controller no less than 5 working days to object to same.

8. TERM AND TERMINATION

- 8.1 This Agreement shall continue in full force and effect for so long as the Processor is Processing Personal Data on behalf of the Controller under the terms of the Contract.
- 8.2 This Agreement shall terminate automatically on termination of the Contract between the Controller and the Processor
- 8.3 On termination of this Agreement, the Processor shall promptly (and in any event within 5 working days of termination) cease Processing the Personal Data (whether provided by the Controller or which are derived from Personal Data provided by the Controller) and permanently and securely destroy the Personal Data so that it is no longer retrievable The Processor shall provide such information as is necessary to enable the Controller to satisfy itself of the Processor's compliance with this clause.

9. GOVERNING LAW

- 9.1 This Agreement shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts shall have exclusive jurisdiction in respect of any dispute or claim arising out of or in connection with it or its subject matter or formation.

IN WITNESS WHEREOF this Agreement is signed on behalf of each of the parties by its duly authorised representative as follows: -

EXCHANGE Communications Support Limited (Processor)	CUSTOMER (Controller)
Witness Signature	Witness Signature
Witness Full Name	Witness Full Name
Address	Address
Place of Signing	Place of Signing
Date	Date