



Performance Networks Limited

Terms and Conditions for the Supply of Hardware and Services

General Terms

1. Basis of contract

- 1.1 The Order constitutes an offer by you to purchase Hardware and/or Services in accordance with these terms and conditions.
- 1.2 The Order shall only be deemed to be accepted when we issue written acceptance of the Order or (if earlier) when we commence delivery of the relevant Hardware and/or Services to you, at which point and on which date the Contract shall come into existence.
- 1.3 Any advertising issued by us and any descriptions of the Hardware or Services contained on our website or in any brochures are issued or published for the sole purpose of giving an approximate idea of the Hardware and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.4 These terms and conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Any quotation given by us shall not constitute an offer capable of acceptance and can be revoked or amended by us at any time.
- 1.6 All of these terms and conditions shall apply to the supply of both Hardware and Services except where application to one or the other is specified.
- 1.7 Where the Order includes the provision of:
 - (a) Design & Consultancy Services, then Schedule 1 shall apply;
 - (b) Support Services, then Schedule 2 shall apply;
 - (c) the SupaFi Portal Service, then Schedule 3 shall apply;
 - (d) Telephony Services, then Schedule 4 shall apply;
 - (e) Internet Connectivity Services, then Schedule 5 shall apply; and/or
 - (f) Hardware, then Schedule 6 shall apply.
- 1.8 You and we shall each comply with all applicable anti-bribery laws.
- 1.9 If you require changes to any Services (including but not limited to any site moves) you shall complete a new Order to update or replace the existing Order in respect of the Services to be modified (unless in our sole discretion we agree variation by less-formal means).

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Company Registration Number:8025098 VAT Number: GB135932409

2. Your obligations

2.1 You shall:

- (a) ensure that the terms of the Order (and any other information you provide to us) are complete and accurate;
- (b) co-operate with us and follow our reasonable instructions in all matters relating to the supply of the Hardware or Services;
- (c) keep secret any user names and passwords used by you or your users and notify any security breach to us immediately;
- (d) ensure your existing hardware and/or infrastructure meets any minimum specifications notified to you by us or as required by applicable law;
- (e) not sell or attempt to resell the Services to any person unless permitted by the Order;
- (f) not use the Services for any unlawful activity or purpose or in a manner which causes nuisance to any person or unlawfully infringes any person's rights (nor allow any person to use the Services in such manner);
- (g) notify us immediately you become aware that any person is using the Services for any unlawful activity or purpose or in a manner which causes nuisance to any person;
- (h) indemnify us and keep us indemnified against all costs, losses, expenses, claims and demands we may suffer or incur as a result of your breach of clause 2.1(f) above;
- (i) consent (and do hereby consent) to us co-operating with law enforcement agencies and relevant copyright holders who reasonably demonstrate a breach of clause 2.1(f) above, including but not limited to the supply by us of your name, address and relevant account information;
- (j) comply with any fair usage policy or acceptable use policy we may issue from time to time;
- (k) where we supply any routers, access points or other hardware to you other than pursuant to a sale of Hardware (**Supplier Property**), remain liable for the Supplier Hardware all times, insure it against all applicable risks and return it to us promptly on demand;
- (l) (where relevant) prepare your premises for the supply of the Services in accordance with our instructions and you shall be responsible for making good your premises after any work carried out by us or our representatives;
- (m) where our employees or representatives visit your site, you will take all reasonable steps to ensure their health and safety;
- (n) provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us to provide the Services; and

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- (o) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.
- 2.2 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (**Your Default**):
- (a) without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations in each case to the extent Your Default prevents or delays our performance of any of our obligations;
 - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 2.2; and
 - (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

3. Our obligations

- 3.1 We shall supply any Services to you in accordance with the Order in all material respects.
- 3.2 We shall use our reasonable endeavours to meet any performance dates for the Services specified in the Order (or as otherwise agreed between us in writing), but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 We warrant to you that the Services will be provided using reasonable care and skill. We do not guarantee that any Services will be available continuously and/or fault-free.
- 3.4 We shall have no liability whatsoever for any disruption to Services caused by any act or omission (including configuration changes) by you, your employees, sub-contractors or other representatives.
- 3.5 Where our employees or representatives visit your site, we will comply with your reasonable health and safety requirements notified to us.
- 3.6 We may from time to time need to modify, suspend or discontinue any part of the Services for reasons beyond our control (whether to comply with law, the requirements of our suppliers or otherwise). In such circumstances, we shall provide you with as much notice of the modification, suspension or discontinuance as we are reasonably able but shall have no liability to you for any such changes.

4. Charges and payment

4.1 The prices for Hardware and Services are as described in the relevant schedules.

4.2 We shall be entitled to invoice you:

- (a) in respect of Hardware, on receipt of your Order;
- (b) in respect of Non-Recurring Services, at any time after completion of delivery of the relevant Services;
- (c) in respect of Recurring Services, either monthly or quarterly in advance (as indicated on the Order); and
- (d) in respect of any per-call telephone charges, monthly in arrears.

4.3 You shall pay each invoice submitted by us:

- (a) immediately, unless we (at our sole discretion) agree payment terms with you, in which case you shall pay our invoice within 14 days of the date of the invoice (or in accordance with any other credit terms agreed by us and confirmed in writing to you); and
- (b) in full and in cleared funds to a bank account nominated in writing by us, and

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time for payment shall be of the essence of the Contract.

4.4 Where we agree credit terms we shall be entitled to revoke them at any time at our sole discretion.

4.5 We prefer direct debit payments for all Recurring Services. Where you do not agree to pay by direct debit we shall be entitled to levy an administration charge on each invoice (in accordance with our administration charges in force from time to time).

4.6 All amounts payable by you 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 us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Hardware at the same time as payment is due for the supply of the Services or Hardware.

4.7 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 8 (Termination), you shall pay interest on the overdue sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, from the due date until payment of the overdue sum, whether before or after judgment. We shall also be entitled to levy an administration fee for late payment (in accordance with our administration fees in force from time to time).

- 4.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5. Intellectual property rights

- 5.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by you) shall be owned by us or our licensors.

- 5.2 We grant to you a non-exclusive, non-transferable, royalty-free licence to use the Services and any deliverables supplied pursuant to the Services. The term of such licence shall:

- (a) be perpetual, in relation to any Non-Recurring Services; and
- (b) expire on the termination of the Contract, in relation to any Recurring Services.

Where the Services include access to any software (including but not limited to the SupaFi Portal Service) you shall not attempt to copy nor (except as permitted by law) decompile or modify the software nor shall you be entitled to sub-license your right to use such software (save as permitted by us from time to time).

- 5.3 You grant to us a non-exclusive, royalty-free licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.

6. Confidentiality

- 6.1 You and we both undertake that we shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 6.2.

- 6.2 Each of us may disclose the other party's confidential information:

- (a) to our employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out our obligations under the Contract. We shall each ensure that our employees, officers, representatives, subcontractors or advisers to whom we disclose the other party's confidential information comply with this clause 6; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 6.3 Neither of us shall use the other party's confidential information for any purpose other than to perform our obligations under the Contract.

7. Limitation of liability

7.1 Nothing in these terms and conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

7.2 Subject to clause 7.1, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to:

- (a) in the case of an Order for Hardware and/or Non-Recurring Services, the charges paid by you to us pursuant to the Order out of which the liability arose; and
- (b) in the case of an Order for Recurring Services, the charges paid by you to us pursuant to the Order out of which the liability arose during the previous 6 months (or the charges anticipated to be paid during the following 6 months where the relevant Recurring Services have not yet been supplied for that period).

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

7.5 This clause 7 shall survive termination of the Contract.

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8. Term and Termination

- 8.1 Where the Contract includes Recurring Services, they shall continue for the minimum period set out on the Order (**Initial Term**) and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate the Recurring Services at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 8.2 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if:
- (a) you fail to pay any amount due under the Contract (or any other contract between us) on the due date for payment;
 - (b) you commit a material breach of your obligations under the Contract and (if such breach is remediable) fail to remedy that breach within 30 days after receipt of notice in writing to do so;
 - (c) you take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business;
 - (d) you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
 - (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to us, we may suspend the supply of Services or all further deliveries of Hardware under the Contract or any other contract between us if:
- (a) you fail to pay any amount due under the Contract on the due date for payment;
 - (b) you are in material breach of your other obligations under the Contract;
 - (c) we reasonably believe the Services are being used in a manner contrary to clause 2.1(f); or
 - (d) you become subject to any of the events listed in clause 8.2(c) to clause 8.2(e), or we reasonably believe that you are about to become subject to any of them.

9. Consequences of termination

- 9.1 On termination of the Contract:

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- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and Hardware supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
 - (b) you shall return all Supplier Property and any Hardware which has not been fully paid for. If you fail to do so, then we may enter your premises and take possession of it. Until it has been returned, you shall be solely responsible for its safe keeping.
- 9.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 9.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

10. Force majeure

We shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of our obligations under the Contract if such delay or failure result from an event, circumstance or cause beyond our reasonable control (including for the avoidance of doubt any acts or omissions of third party telecommunications or network service providers on whom our Services may depend) (**Force Majeure Event**).

11. General

11.1 Assignment and other dealings

- (a) We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract.
- (b) You shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract without our prior written consent.

11.2 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to a director (if a company), member (if a limited liability partnership) or partner (if a partnership).
- (b) Any notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by

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pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.3 **Severance.** 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.

11.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9 11.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between you and us, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

11.6 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) We each acknowledge that in entering into the Contract we do not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. We each agree that we shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 11.8 **Variation.** Except as set out in these terms and conditions, no variation of the Contract or of the terms of any Order shall be effective unless it is agreed in writing by both parties (or their authorised representatives).
- 11.9 **Publicity.** We shall be entitled to state that you are our customer on our sales and promotional material (including reasonable use of your logos in such material) without your prior consent.
- 11.10 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

12. Interpretation

The following definitions and rules of interpretation apply in these terms and conditions.

12.1 Definitions:

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

Contract: the contract between you and us for the supply of Hardware and/or Services in accordance with these terms and conditions.

Design & Consultancy Services: the design and/or installation of networks and associated hardware and any consultancy services relating to networks.

Force Majeure Event: has the meaning given to it in clause 10.

Hardware: the hardware (if any) set out in the Order.

Internet Connectivity Services: the provision of internet connectivity, including but not limited to leased lines and fibre broadband.

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.

Non-Recurring Services: the Design & Consultancy Services and any other services of a non-recurring nature agreed between us from time to time.

Order: your order for the supply of Hardware and/or Services, as set out your purchase order form (whether submitted by post, email or other electronic means).

Recurring Services: the Support Services, the SupaFi Portal Service, the Telephony Services, the Internet Connectivity Services and any other services of a recurring nature agreed between us from time to time.

Services: the Recurring Services and/or Non-Recurring Services supplied by us to you as set out in the Order.

SupaFi Portal Service: the captive portal service offered by us under the SupaFi brand.

Support Services: remote diagnosis and support services relating to networks.

Telephony Services: any services relating to telephony, including but not limited to hosted PBX services, the provision of analogue or digital telephone lines and call routing services.

12.2 Interpretation:

- (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 and permitted assigns.
- (c) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (d) A reference to **writing** or **written** includes email but excludes fax.

Schedule 1 –Design, Installation and Consultancy Services**1. Design Service**

- 1.1 If indicated on the Order, we shall provide a network design for the premises set out on the Order. In order to provide such design we shall either carry out a predictive survey (based on floor plans) or a site survey (as indicated on the Order).
- 1.2 We shall charge a fee for carrying out a site survey as set out on the Order.
- 1.3 Where we provide a design based on predictive surveys you acknowledge that this is based solely on floor plans and we shall have no liability for any performance or other issues arising from factors not reasonably apparent from the floor plans.

2. Installation Service

- 2.1 If indicated on the Order, we shall install and configure the network (including any related Hardware) at the premises set out in the Order.
- 2.2 Where set out on the Order, we or our sub-contractors shall install data cabling. You acknowledge that the layout of the installation site may prevent data cabling being installed in your preferred location or in a manner which is discrete or hidden.
- 2.3 You shall inform us as soon as is reasonably practicable if you wish to change an agreed installation date. If you fail to provide 2 Business Days' notice of cancellation of an agreed installation appointment to us, you shall be liable for all associated costs incurred by us and our sub-contractors.

3. Consultancy Services

- 3.1 If indicated on the Order, we will carry out consultancy Services in respect of your existing network to attempt to identify causes of signal or performance degradation and/or to recommend improvements to your network.
- 3.2 You acknowledge and agree that we may not be able to resolve issues arising from the factors set out in paragraphs 4.1 and 4.2 and in such case any charges for our consultancy Services will remain payable.

4. Quality of the Network

- 4.1 You acknowledge that many external factors (including but not limited to other WiFi networks, infra-red devices or other radio networks operating in the vicinity) can affect WiFi signal coverage and performance. Accordingly, you agree we shall have no liability whatsoever for any degradation in signal coverage or performance arising (whether in whole or in part) from

such factors to the extent they were not within our knowledge at the time of preparing any relevant network design or installing any relevant network.

- 4.2 We shall also have no liability for performance issues relating to your existing infrastructure (including but not limited to your existing equipment and data cabling) which were not brought to our attention or reasonably apparent on any site survey carried out by us.
- 4.3 Subject to paragraphs 4.1 and 4.2 above, we shall endeavour to investigate and resolve any signal coverage or performance issues reported to us within one month of the supply of our network design (or where appropriate, our installation of the network). Any remedial work relating to factors beyond our reasonable control (including those set out in paragraphs 4.1 and 4.2 above) shall be charged to you in accordance with our hourly consultancy rates in force from time to time.

5. Charges

- 5.1 The charges for the Design & Consultancy Services shall be as set out on the Order.
- 5.2 Where stated on the Order, we shall be entitled to charge you for any expenses reasonably and properly incurred by the individuals whom we engage in connection with the Design & Consultancy Services (to the extent they have to travel to your premises) including travelling expenses, hotel costs, subsistence and any associated expenses.
- 5.3 We reserve the right to increase the charges for the Design & Consultancy Services to reflect any increase in the cost to us of providing those Services that is due to:
- (a) any factor beyond our control (including increases in taxes and duties and increases in labour costs);
 - (b) additional work undertaken by us resulting from issues or faults with your existing infrastructure (including but not limited to your existing equipment and data cabling) which were not brought to our attention or reasonably apparent on any site survey carried out by us;
 - (c) any request by you to change the nature of the Services ordered; or
 - (d) any delay caused by your instructions in respect of the Services or your failure to give us adequate or accurate information or instructions in respect of the Services.

Schedule 2 –Support Services

1. Basis of Service

- 1.1 We will supply the Support Services during the hours and on the days set out on the Order (**Support Hours**). The Support Services shall be provided by telephone and email only using the support telephone numbers and email addresses notified to you from time to time.
- 1.2 You acknowledge that we may provide the Support Services ourselves or through our agents or sub-contractors.
- 1.3 As part of the Support Services we shall:
- (a) support your network installation and attempt to resolve remotely any issues reported to us by you;
 - (b) (where indicated on the Order) provide remote support to your end user customers in resolving any difficulties connecting to your network; and
 - (c) at your request, make configuration changes to those of your wireless access points, switches and other hardware that we have agreed to support.
- 1.4 You agree that any Support Services provided in accordance with paragraph 1.3(c) above are subject to a fair usage policy and we shall be entitled to charge you (at our hourly consultancy rates in force from time to time) in respect of any major configuration changes requested by you or where we (acting reasonably) determine that you have requested an excessive amount of changes in a given period.
- 1.5 Where you notify us during the Support Hours that your network is inoperable we shall endeavour to provide a response and resolution in accordance with any applicable service level agreement entered into between us from time to time.

2. Charges

- 2.1 The charges for the Support Services shall be as set out on the Order.
- 2.2 We shall be entitled to increase the charges for the Support Services by up to 5% per annum on 30 days' prior written notice to you.
- 2.3 If you have not ordered the Support Services from us, you may request any of the Services described in this Schedule 2 on a one-off basis. Where we agree to supply the Services on such basis we shall do so at our hourly consultancy rates in force from time to time.

3. Software

3.1 We may from time to time resell software (whether service packs or otherwise) to you for installation on your routers and other hardware. You acknowledge and agree that in such circumstances:

- (a) we are the reseller of such software and not the licensor;
- (b) you shall enter into an end user licence agreement with the software licensor; and
- (c) we shall have no liability to you whatsoever for any defects in such software or for any breach of the end user licence agreement between you and the software licensor.

Schedule 3 – SupaFi Portal Service**1. Basis of Service**

- 1.1 The SupaFi Portal Service allows your customers to connect to your network by providing an email address or social media credentials (such as Facebook or Twitter).
- 1.2 You acknowledge that we cannot guarantee the availability of our links with third party social media sites and where such links are unavailable from time to time, authentication with those sites will not be possible.
- 1.3 We will retain for at least 12 months the email addresses and social media login credentials supplied by your customers and will make them available for your download.
- 1.4 You agree that we shall own all analytics data obtained from use of the SupaFi Portal Service.
- 1.5 Where we customise the visual appearance of your portal to your design, we acknowledge that you retain ownership of all visual and design elements supplied by you.

2. Data Protection

- 2.1 You agree that for the purposes of the Data Protection Act 1998 (and any successor legislation), you are the Data Controller and we are the Data Processor in respect of any Personal Data collected using the SupaFi Portal Service.
- 2.2 We shall process the Personal Data only in accordance with your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by you PROVIDED THAT we may pass on relevant Personal Data to law enforcement agencies or relevant copyright holders who reasonably demonstrate that an offence or copyright infringement has been carried out by a user of the network.
- 2.3 We shall take reasonable steps to ensure the reliability of all our employees who have access to the Personal Data.
- 2.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments. In particular, you shall not use the Personal Data for any purpose other than that for which the end user provided his consent.
- 2.5 You shall indemnify us and keep us indemnified and defend us at your own expense against all costs, claims, damages or expenses incurred by us or for which we may become liable due to any failure by you or your employees or agents to comply with your obligations under paragraph 2.4.

- 2.6 In this schedule, the terms “Data Controller”, “Data Processor”, “Personal Data” and “process” shall have the meaning given to them in the Data Protection Act 1998 or any successor legislation.

3. DNS Content Filtering Service

If indicated on the Order, we shall supply our DNS Content Filtering Service to you. You acknowledge that this Service uses domain name lists provided by third parties and accordingly we shall have no liability whatsoever for the accuracy of such lists (including where legitimate sites are filtered and undesirable sites are not filtered).

4. Charges

- 4.1 The ongoing charges for the SupaFi Portal Service shall be as set out on the Order and are based on either the maximum number of devices connected or the maximum number of users connected within a particular period (as indicated on the Order) and we shall be entitled to increase our charges to reflect any change to such number. We shall also charge an initial configuration fee as set out on the Order.
- 4.2 We shall be entitled to increase the ongoing charges for SupaFi Portal Service by up to 5% per annum on 30 days’ prior written notice to you.

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5. White-Labeling of the SupaFi Portal Service

- 5.1 Where indicated on the Order, we will allow you to white-label our SupaFi Portal Service under your own brand. The remainder of this paragraph 5 applies in such circumstances.
- 5.2 We (or our licensors) shall retain ownership of all Intellectual Property Rights in the SupaFi Portal Service other than any visual elements to which paragraph 1.5 above applies.
- 5.3 You acknowledge that all Personal Data captured through the SupaFi Portal Service shall be under your sole control and you shall have sole responsibility for the processing of all such Personal Data. You shall indemnify us and keep us indemnified and defend us at your own expense against all costs, claims, damages or expenses incurred by us or for which we may become liable as a result of your processing of any Personal Data captured through the SupaFi Portal Service.

Schedule 4 – Telephony

1. Hosted PBX

- 1.1 You acknowledge that the hosted PBX service and its connection to the telephone network are reliant on internet connectivity and we shall have no liability whatsoever for a failure of the Service resulting (in part or in whole) from interruptions to your or our internet connection or any degradation in the speed thereof.
- 1.2 We shall, at your request, make configuration changes to your hosted PBX instance, subject to a fair usage policy. In particular, we shall be entitled to charge you (at our hourly consultancy rates in force from time to time) for changes where we (acting reasonably) determine that you have requested an excessive amount of changes in a given period.
- 1.3 You agree that you do not own any telephone numbers used by you (whether assigned to you by us or our suppliers or whether ported by you). We shall endeavour to allow you to retain any such telephone numbers but shall have no liability where we are unable to do so.
- 1.4 We shall endeavour to ensure the hosted PBX service is available at all times and in the event of any failures we shall use our reasonable endeavours to secure a prompt resolution from our own suppliers in accordance with their service level agreements.
- 1.5 The rental fee for the hosted PBX service shall be as set out on the Order. We shall be entitled to increase such charges by up to 5% per annum on 30 days' prior written notice to you.
- 1.6 There are inherent limitations in any hosted PBX system as compared to a fixed line telephone system and you confirm that you understand such limitations and have selected hosted PBX as a solution for your business notwithstanding such limitations.
- 1.7 If applicable and unless you request otherwise, we shall publish your name, address and telephone number in the relevant phone book serving your area and make such telephone number available from directory enquiries services.

2. Telephone lines

- 2.1 The line rental charges and call charges for all telephone lines shall be in accordance with the call package indicated on the Order (or otherwise agreed between us in writing) and in accordance with our advertised rates from time to time, which we shall be entitled to increase on 30 days' notice to you at any time. All per-call charges shall be based upon call and billing data recorded by or on behalf of us and are calculated in accordance with our advertised rates and call packages from time to time. All per-call charges are calculated per second (rounded up) and may be subject to minimum charges (as notified to you from time to time).
- 2.2 Line rental charges shall accrue from the date of connection.

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2.3 We shall be entitled to invoice you in respect of any requested changes to line rental services or in respect of any fault reported by you where we reasonably determine that there is no fault (in both cases in accordance with our tariffs from time to time in force).

2.4 In order to reduce the risk of fraud or otherwise, you acknowledge that on bundled minute call packages we may at our sole discretion on not less than 7 days' notice remove the relevant bundled minute call package from your pricing and tariff, in the event that your call profile deviates significantly from our standard call profile and over 75% of your bundled minutes are used in any month.

3. Emergency Calls and VoIP services

3.1 In respect of calls to emergency numbers (including but not limited to 999 calls) using Voice over IP you acknowledge and agree that:

- (a) the location information received by the emergency services will be limited to the location information provided by you to us for each telephone number (or in the absence of such information, the installation address of the site, which may not be the location from which the call originated);
- (b) emergency calls may fail if there is a power failure or connection failure; and
- (c) the ability to make emergency calls cannot be guaranteed.

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3.2 You shall notify us of the location information for each telephone number and shall promptly notify us of any changes to such location information.

Schedule 5 – Internet Connectivity

1. Basis of Service

- 1.1 We shall provide the Internet Connectivity Services to you in accordance with the terms set out in the Order. We (or our representatives) may need to carry out a survey of your premises prior to the commencement of the Internet Connectivity Services (**Site Survey**). If the Site Survey demonstrates that the Internet Connectivity Services cannot be provided to you in accordance with the Contract, we shall be entitled to terminate the Contract without further liability to you.
- 1.2 You agree that you do not own any static IP addresses used by you (whether assigned to you by us/our suppliers or otherwise). You also acknowledge that static IP addresses cannot be guaranteed and we shall have no liability where such addresses are updated.
- 1.3 Any speeds quoted for ADSL and fibre broadband lines are indicative speeds only.
- 1.4 We shall endeavour to ensure that your internet connection is available at all times and in the event of any failures we shall use our reasonable endeavours to secure a prompt resolution from our own suppliers in accordance with the service level agreements between them and us. Where we or our suppliers need to suspend the Internet Connectivity Services for maintenance reasons we shall provide you with as much notice as we reasonably can (having regard to the notice we ourselves receive from our suppliers) and where practicable, will ensure such suspension is carried out in a manner to cause least disruption to you.
- 1.5 Where indicated on the Order we may agree to specific service levels, which shall apply in addition to these terms and conditions.
- 1.6 In the event of migration of an existing broadband service to us, you shall comply with our migration procedures in force from time to time. We do not warrant that any migration to our Services will be uninterrupted.
- 1.7 For the purposes of determining the expiry of the Initial Term and any Extended Term of the Internet Connectivity Services pursuant to clause 8.1 of the General Terms, the Initial Term shall be deemed to commence from the date on which we confirm the Service is active.
- 1.8 You shall not cancel your underlying telecommunications service with a third party if such cancellation would prevent us providing the Internet Connectivity Services to you. Where you cancel such service in breach of this paragraph, you agree that you shall remain liable to pay us our full charges for the Internet Connectivity Services for the remainder of the applicable contractual term, whether or not we are able to provide such Services to you.

2. Charges

- 2.1 The installation fee and ongoing charges for the Internet Connectivity Services shall be as set out in the Order PROVIDED THAT we may increase the installation charges to reflect any facts or circumstances not known (or reasonably foreseeable) by us at the time of the Order (including any such facts or circumstances shown by the Site Survey).
- 2.2 We shall be entitled to increase the ongoing charges for the Internet Connectivity Services to reflect any increase in the costs of our own suppliers in respect of such Services.
- 2.3 Where we are providing Internet Connectivity Services and installing a network at your premises, you acknowledge that we cannot configure the network until the internet connection is live. All charges in respect of Internet Connectivity Services shall accrue from the date on which the internet connection is available without regard to the date on which the network is available.
- 2.4 Where you terminate your services contracts or other arrangements with third parties in order to receive Services from us, you shall remain liable to pay any charges outstanding to such third parties (whether termination fees, outstanding charges for the remainder of a contractual term or otherwise) and you acknowledge and agree that we shall have no liability whatsoever for such charges.

Schedule 6 – Hardware

1. Delivery of Hardware

- 1.1 Where we agree to deliver the Hardware, we shall deliver it to the location set out in the Order or such other location as we may agree at any time after we notify you that the Hardware is ready.
- 1.2 Any dates quoted for delivery of the Hardware are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Hardware that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Hardware.
- 1.3 If we fail to deliver the Hardware, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Hardware. We shall have no liability for any failure to deliver the Hardware to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions for the Hardware or any relevant instruction related to the supply of the Hardware.
- 1.4 If you fail to take or accept delivery of the Hardware within three Business Days of us notifying you that the Hardware is ready, then except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Hardware:
- (a) delivery of the Hardware shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which we notified you that the Hardware was ready; and
 - (b) we shall store the Hardware until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 1.5 If ten Business Days after we notified you that the Hardware was ready for delivery you have not taken or accepted delivery of it, we may resell or otherwise dispose of part or all of the Hardware and charge you for any shortfall below the price of the Hardware.
- 1.6 We may deliver the Hardware by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

2. Quality of Hardware

- 2.1 We shall endeavour to assign to you the benefit of any warranties or guarantees offered by the manufacturer of the Hardware (to the extent they are assignable).
- 2.2 We may also sell extended warranties on terms agreed with you in writing.

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- 2.3 You acknowledge that we are a reseller of the Hardware and not the manufacturer and accordingly we accept no liability whatsoever for any defects in the Hardware (save for any damage that you demonstrate to our reasonable satisfaction has been caused by our acts or omissions or those of our agents or sub-contractors). Your sole recourse in respect of any such defects shall be under the warranties or guarantees (if any) assigned to you under paragraph 2.1 above or in accordance with any extended warranty sold to you under paragraph 2.2 above.

3. Ownership and risk

- 3.1 The risk in the Hardware shall pass to you on completion of delivery to the agreed location.
- 3.2 You shall not own the Hardware until we receive payment in full for the Hardware.
- 3.3 Until ownership of the Hardware has passed to you, you shall:
- (a) store the Hardware separately from all other goods held by you so that they remain readily identifiable as our property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - (c) maintain the Hardware in satisfactory condition and keep it insured against all risks for its full price on our behalf from the date of delivery;
 - (d) notify us immediately if you become subject to any of the events listed in clause 8.2(c) to clause 8.2(e) of the General Terms; and
 - (e) give us such information relating to the Hardware as we may require from time to time.
- 3.4 Subject to paragraph 3.5, you may use the Hardware in the ordinary course of your business (but not otherwise) before we receive payment for the Hardware.
- 3.5 If before ownership of the Hardware passes to you, you become subject to any of the events listed in clause 8.2(c) to clause 8.2(e) of the General Terms, then, without limiting any other right or remedy we may have:
- (a) your right to use the Hardware in the ordinary course of your business ceases immediately; and
 - (b) we may at any time:
 - (i) require you to deliver up all Hardware in your possession which has not been resold; and
 - (ii) if you fail to do so promptly, enter any premises (whether yours or those of a third party) where the Hardware is stored in order to recover it.

4. Charges

4.1 The price for Hardware:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in our price list at the date of the Order; and
- (b) shall (where we do not deliver it in person) be exclusive of all costs and charges of packaging, insurance, transport of the Hardware, which we shall invoice to you.

4.2 We reserve the right to increase the price of the Hardware, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Hardware to us that is due to:

- (a) any factor beyond our control (including currency fluctuations or increases in the prices of any manufacturer or distributor);
- (b) any request by you to change the delivery date(s), quantities or types of Hardware ordered; or
- (c) any delay caused by your instructions in respect of the Hardware or your failure to give us adequate or accurate information or instructions in respect of the Hardware.