

INTRODUCTION:

Incom Business Systems Limited shall supply equipment and Services as requested by the customer in accordance with the Terms and conditions of this agreement.

1. DEFINITIONS AND INTERPRETATIONS

AGREEMENT: means this agreement together with any Order Form referred to herein.

INCOM: Incom Business Systems Limited, Clarendon House, Clarendon Road, Manchester, M30 9AL. Company Registration number 1437211.

BT: Means British Telecommunications PLC and its Associated Companies.

CHARGES: Any or all of the charges/fees to be paid by the Customer to Incom for the provision of the goods and services pursuant to this agreement and inter alia including any charges referred to in the Order Form.

DOCUMENTATION: Any specifications, technical manuals, user instructions or any other documentation supplied by Incom.

EQUIPMENT: Any equipment supplied by Incom to the customer.

IPR: All Intellectual Property Rights including, without limitation, copyright, patents, trademarks, registered designs, design rights, mask works, know how and all other similarly protected rights.

ORDER: means the Order form signed by the parties or such other document that the supplier deems to constitute the Order, which describes the Equipment and Services to be provided.

PROPER USE: the use of equipment strictly in accordance with Documentation and/or any instructions and/or recommendations notified by Incom.

SERVICES: means any and all of the Services that the Supplier has agreed to provide the Customer as set out in the Order.

SITE: means any or all of the Customer's sites at which the supplier is providing the Customer with services or equipment.

SUPPLIER: means Incom Business Systems Limited.

CUSTOMER: the party named as such on the Order form.

CUSTOMER FACILITIES: all hardware, software, ancillary equipment, telecommunications, storage and other facilities owned or controlled by the Customer.

DELIVERY ADDRESS: the address stated in an Order Form to which the equipment is to be delivered to.

WORKING DAY: means 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Supplier.

Headings are inserted in this Agreement for ease of reference and do not affect the interpretation of this Agreement. Any reference in this Agreement to any provision of a Statute, shall be construed as a reference to that provision, as amended, re-enacted or extended at the relevant time.

2.0 CONDITIONS AND SCOPE OF AGREEMENT

2.1 Subject to any variation under clause 2.7 the Agreement shall be on these conditions to the exclusion of all other terms (including any terms or conditions that the Customer purports to apply under any purchase order, confirmation order, specification or other documentation).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation order, specification or other document shall form part of Agreement simply as a result of such document being referred to in the Agreement.

2.3 These Conditions apply to all Incom's sales and any variation to these Conditions and any representations about the Equipment or Services shall have no effect unless expressly agreed and signed by a Director of Incom.

2.4 Each order or acceptance of a quotation by the customer shall be deemed to be an offer by the Customer to proceed subject to these conditions.

2.5 In Consideration of the payment by the Customer of the Charges and any other sums due from the Customer, Incom shall supply the Equipment and/or services as described in this Agreement. This Agreement will be binding when signed by a Director or such other authorised person from Incom.

2.6 Incom shall carry out its obligations under this Agreement with the reasonable care and skill of a reasonably competent Telecommunications provider.

2.7 Unless expressly agreed in writing by Incom the time for performance of any obligation by Incom shall not be of the essence of this Agreement.

2.8 The Customer acknowledges that Incom will supply the Equipment and services at the request of the Customer and that it's the Customers responsibility to determine whether the Equipment and services are suitable for its requirements.

3.0 CUSTOMER FACILITIES:

3.1 The Customer shall test Customer Facilities and ensure that they are complete, in good working order and ensure that all specifications are not less than the minimum determined by Incom.

3.2 Incom will advise the customer in writing if for the purposes of supplying the services contained on the front page of this document, the Customer Facilities are not suitable and what necessary steps are to be taken by the Customer to make the Customer Facilities suitable.

3.3 The Customer shall use their reasonable endeavours to complete any of the works notified by Incom at each location within 7 days of notification.

3.4 Incom may perform repeat inspections (and the procedure outlined in clause 3.2) until Incom are satisfied the Customer Facilities are suitable.

4.0 TERMS OF PAYMENT

4.1 In consideration of Incom supplying Equipment and Services, the Customer shall pay to Incom the Charge's subject to this Agreement.

4.1 Payment of sums due from the Customer to Incom shall be made within 14 days

4.2 Charges expressed are exclusive of tax and duties including without limitation, value added tax which shall be paid by the customer, at the rate and in the manner provided by the law governing this Agreement.

4.3 In the event of non payment of any of the sums due within the prescribed period Incom reserves the right to charge interest on the outstanding amount at the rate of 10% above the Bank of England base rate per month calculated on a daily basis until such time as payment is made.

4.4 When signed by a Director of Incom this Order forms a binding contract and may only be cancelled with the written consent of a Director of Incom (which consent shall be within the sole and absolute discretion of Incom).

4.5 If the Customer seeks to cancel the Order within 21 days of the date of the Order a cancellation fee equivalent to 20% of the total fees due is payable immediately.

4.6 If the Customer seeks to cancel the order after 21 days from the date of the order a cancellation fee equivalent to 45% of the total fees due is payable immediately.

4.7 Both parties acknowledge that the time for payment of the Charges is of the essence and notwithstanding clause 4.3, if the Customer fails to pay any sum by the due date, Incom may at Its own discretion and without prejudice to any other remedy at any time after payment has become due, terminate or suspend the performance of this Agreement.

4.8 If Incom terminate this Agreement for any reason, any sums including interest for the late payment will immediately become payable in full.

4.9 Incom reserves the right to increase the charges payable in respect of Equipment to reflect any increase in the cost to Incom which is due to any factor beyond Incom's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties) provided that Incom gives written notice to Customer at any time.

5.0 DELIVERY AND INSTALLATION

5.1 Delivery and installation of the Equipment shall be made at the Delivery Address.

5.2 Incom shall use all reasonable endeavours to deliver Equipment upon any delivery date indicated in an Order Form or as soon thereafter as is possible. If delivery will be before or after the delivery date indicated in the Order Form, Incom will use their reasonable endeavours to give the Customer not less than 24 hours notice of the actual delivery date.

5.3 Upon delivery the Customer shall make available to Incom (or Incom's delivery agent) free of charge such labour and equipment as is required to effect delivery and installation of the Equipment at the Delivery Address. Upon completion the Customer shall be solely responsible for the removal and disposal of all packing cases and other containers in which Equipment was delivered and upon completion the Customer shall be solely responsible for cleaning and making good the premises.

5.4 Unless the Customer notifies Incom in writing within 7 days of delivery of the equipment of a material fault of the Equipment, the Customer shall be deemed to have accepted the Equipment. The Customer agrees that 7 days is a reasonable period for inspecting the Equipment and testing the same for any material faults.

6.0 RISK AND OWNERSHIP OF EQUIPMENT

6.1 Risk in Equipment shall pass to the Customer upon delivery.

6.2 In respect of Equipment that is leased to the Customer, the Equipment shall remain the property of Incom or any third party finance company to which Incom has transferred ownership ('owner') at all times and the Customer shall deliver up the Equipment to Incom (or its third party finance company) upon termination or expiry of this Agreement. In the event of a failure to do so, Incom or the owner shall (without prejudice to any other legal remedies it might have) be entitled to enter upon the Delivery Address or any other premises under the Customer's control (without notice to the customer) and remove the Equipment. With effect from delivery if leased the Customer shall upon request by Incom insure the Equipment for its full replacement value with such insurance company as income shall approve (such approval is not to be reasonably withheld) and shall provide a copy of the insurance certificate to Incom which certificate shall have Incom (or its third party finance company) endorsed thereon as loss payee.

6.3 In respect of Equipment sold to the Customer, title to the Equipment shall not pass to the Customer until the date that Charges (and any additional sums payable by the Customer pursuant to this Agreement) and value added tax thereon have been paid in full to Incom.

6.4 Except in respect of Equipment to which title has passed to the Customer pursuant to this Agreement, the Customer shall not be entitled to sell, transfer, lease, change, assign by way of security or otherwise deal in or encumber Equipment and the relationship between Incom and Customer in respect of Equipment including any proceeds of sale or other consideration therefore shall be a fiduciary one.

6.5 The Customer also agrees to pay Incom for the collection of each item of Equipment at the end of a lease or on termination of this Agreement at a cost of £350 + VAT.

6.6 If in breach of Clause 6.2 the (i) Equipment that is leased; or (ii) Equipment that is sold prior to title passing to the Customer then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held (in the case of the proceeds of sale in a separate account) by Customer as trustee for Incom or the owners.

7.0 EXCLUSIONS

7.1 Incom may order certain goods and services from third parties on behalf of the Customer in connection with this Agreement; and the Customer agrees that Incom shall not be liable in respect of any failure by such third parties to supply such goods and services and the Customer shall be solely responsible for pursuing any available

remedies against the third parties.

8.0 ALTERATIONS TO EQUIPMENT AND EXTENSION WIRING

8.1 All alterations to apparatus and extensions to wiring (including the removal and reinstallation to a new site) shall be carried out by an installer authorised by the Supplier.

8.2 Any alterations to the Equipment and wiring shall be notified to the supplier within 14 working days of the commencement of the works.

9.0 CUSTOMER RESPONSIBILITIES AND LIABILITIES

9.1 The Customer shall:

9.2.1 ensure that any IP rights which Incom is required to use or modify in order to supply Maintenance services is /are either proprietary to the Customer or properly licensed to the Customer and that Incom is properly authorised to use or modify the IP Rights. The Customer shall indemnify and hold harmless Incom in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Incom in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Incom or the Customer.

9.2.2 ensure that it's employees or other independent Contractors co-operate reasonably with Incom and it's employees.

9.2.3 take all reasonable steps to ensure the Health and Safety of Incom employees, agents or Independent contractors subject to such employees, agents and independent contractors complying with any Customer's health and safety policy notified to the supplier by the Customer in writing.

9.2.4 Promptly furnish Incom with such information (including without limitation IP addresses) and documents as requested by Incom;

9.2.5 Pay all charges invoiced by Incom;

9.2.6 Ensure that adequate electrical power is supplied to the Equipment;

9.2.7 Store and maintain Equipment in accordance with Documentation;

9.2.8 Use only media and consumerables approved by the Manufacturer or by Incom in writing (Incom's approval not to be unreasonably withheld);

9.2.9 Comply with all Statutory requirements, bye-laws, obligations, regulations, recommendations or instructions relating to the use and or testing of the Equipment;

9.2.10 shall obtain and pay for any such licenses, wayleaves, suitable private wires, jack sockets or any other items necessary for the operation of the Equipment.

9.2.11 ensure that only Incom's personnel are permitted to maintain, service or carry out any adjustments to the Equipment.

9.3 The Customer is solely responsible for maintaining Customer Facilities, in order that the Equipment functions in accordance with the documentation.

10 IP RIGHTS

10.1 The Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Equipment and Services shall be and shall remain in sole property of Incom or such other party as may be identified therein or thereon and the Customer shall not at any time dispute such ownership.

10.2 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of Incom unless otherwise agreed in writing with a director of Incom.

11. CONFIDENTIALITY AND DATA PROTECTION

11.1 The Customer agrees not to disclose to any third parties any confidential information without the prior written consent of a Director from Incom and to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this Agreement. This clause shall not apply to information that the Customer can prove that the information is in the public domain other than by the Customer's breach; or already had in its possession prior to obtaining this information from the supplier; or A third party subsequently disclosed to the Customer free on disclosure and use.

11.2 The Customer may disclose confidential information if required to do so by law, or other Regulatory Authority, but only to the extent of the relevant requirement.

12 LIMITATIONS AND LIABILITY

12.1 Except as otherwise expressly set out in this Agreement, the supplier provides no warranties, conditions, guarantees, undertaking or term expressed or implied, as to the condition or quality of service and all such warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law. The supplier's duty in performing any obligations under this Agreement is only to exercise reasonable care and skill of a reasonably competent communications provider.

12.2 Neither party excludes or limits any liability for death or personal injury.

12.3 The liability of Incom in respect of breaches of this Agreement or of any other duty to the Customer or for negligence in connection with the subject matter of this Agreement shall be limited to the value of charges for the minimum period referred to herein.

12.4 Notwithstanding anything to the contrary in this Agreement, but subject to clause 12.2, the Supplier shall not be liable to the Customer as expressed, implied or otherwise for loss of profits, business, revenue, data, goodwill, anticipated savings, direct or indirect consequential loss or damage.

12.5 Each party agrees that the limitations of liability contained in this clause have been agreed between the parties in the context of the other provisions of this Agreement and satisfy the requirement of reasonableness within the meaning of subsection 2(2) and Section 11 of the Unfair Contract Terms Act 1977.

shall not exceed £1,000,000 (one million pounds) for any one incident or series of incidents during the term of this Agreement.

13.0 FORCE MAJEURE

13.1 Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

13.2 Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

14.0 TERMINATION

14.1 Either party may terminate this Agreement immediately by written notice if any party commits a breach of this Agreement that is not capable of being remedied.

14.2 Either party may serve written notice requiring the other party to remedy the breach within 30 (thirty) days of receipt of the written notice of the breach and in default, the party serving the notice to remedy may immediately terminate this Agreement without further notice.

14.3 Either party may immediately terminate this Agreement by written notice if the other party commits an act of bankruptcy or goes into or is put into liquidation or is placed in administration (other than solely for the purposes of reconstruction or bone fide amalgamation) or the other party suffers seizure of any of its property for non payment of monies owing.

14.4 A Force Majeure continues for a period of more than 3 months.

15.0 NOTICES

15.1 Notices must be written and delivered by hand or by first class prepaid post. The address for service on the Supplier (subject to any change notified by the Supplier) is : The Managing Director, Incom Business Systems Limited, Clarendon House, Clarendon Road, Eccles, Manchester, M30 9AL. The Address for the Customer is set out on the front page of this Agreement or the latest invoice whichever is the most recent.

15.2 Notice will be deemed served by hand delivery on the next working day and by first class post by two working days after posting provided evidence can be given that the envelope was correctly addressed and has not been returned to sender.

16.0 GENERAL

16.1 A delay in enforcing rights under this agreement shall not affect the enforceability or validity of the remainder of it.

16.2 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it.

16.3 The termination or expiry of this Agreement shall be without prejudice to the rights of either party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.

16.4 This Agreement contains the entire Agreement and supersedes all other Agreements and understandings between the parties with respect to the subject matter. Any terms proposed by the Customer that are not written in these Terms and Conditions shall be invalid. Subject to clause 12.2 each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in this Agreement and, that its only remedy can be for breach of contract.

16.5 Nothing in this Agreement shall create or be deemed to create, a partnership or the relationship of principle and agent or employer and employee between the parties. This Agreement is not intended to be of the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself trustee of the rights under it for the benefit of a third party.

16.7 The Supplier may at any time change this Agreement without the prior agreement of the Customer. This Agreement in its most current format is available at <http://www.incom-business-systems.co.uk> . The Supplier may transfer or assigns its rights and obligations to any of its associated companies and may sub-contract any of its obligations. The Customer may not transfer, assign, sub-licence or sub contract any rights, licences or obligations under this Agreement without the prior written consent of Incom.

16.9 English Law shall govern the validity, construction and performance of this Agreement and the parties submit to the exclusive jurisdiction of the English Courts.

Incom business systems comply with OFCOM's approved code of practice for handling complaints and a copy of our customer complaint code can be found at www.incom-business-systems.co.uk.