

DATA TERMS AND CONDITIONS OF INTOUCH ADVANCE LIMITED

1. INTERPRETATION

1.1

In these terms and conditions ("Conditions"): "CONTRACT" means the contract for the provision of the Specified Service to the Customer incorporating these Conditions, the Specification Sheet and the Supplier's Conditions as made applicable herein "CUSTOMER" means the person named on the Specification Sheet for whom Intouch Advance Ltd has agreed to procure the provision of the Specified Service in accordance with the Contract be it written or email confirmation supporting the price and tenure of the service provided to the party authorising the order.

„DOCUMENT" includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data

„HANDOVER DOCUMENT" means written information in documentary or electronic format provided by Intouch Advance Ltd to the Customer stating that the installation of the Supplier's Equipment is complete together with such other information as shall be deemed appropriate by Intouch Advance Ltd from time to time.

„INITIAL TERM" means the period commencing on the Operational Services Date and for the period as set out in the Specification Sheet subject to continuation in accordance with clause 7.1

„INPUT MATERIAL" means any Documents or other materials, and any data or other information provided by the Customer relating to the Specified Service INTOUCH ADVANCE means Intouch Advance Limited (registered number 4220359) whose registered office is at Festival Building, Ashley Lane, Shipley, West Yorkshire BD17 7DB.

"INTOUCH ADVANCE Group Company" means an Intouch Advance subsidiary or holding company, including without limitation a holding company of Intouch Advance, or a subsidiary of any such holding company, all as defined by Section 736 of the Companies Act 1985, as amended by the Companies Act 1989.

„OPERATIONAL SERVICES DATE" means the date when the Specified Service is first made available to the Customer.

„OUTPUT MATERIAL" means any Documents or other materials, and any data or other information provided by Intouch Advance relating to the Specified Service

„SPECIFICATION SHEET" means the sheet to which these Conditions are appended in which the Specified Services are detailed

„SPECIFIED SERVICE" means the service to be provided by Intouch Advance for the Customer as referred to in the Specification Sheet

„SUPPLIER" means the company named in the Supplier's Conditions which has agreed to supply the Specified Services to Intouch Advance

„SUPPLIER'S CONDITIONS" means the terms and conditions (if any) attached hereto in accordance with which the Supplier has agreed to supply the Specified Services to Intouch Advance order

„SUPPLIER'S EQUIPMENT" means the equipment which the Supplier must install in the Customer's premises in order to provide the Specified Services.

1.2

The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3

In the event of any conflict between the provisions of these Conditions and the Supplier's Conditions, the terms of these Conditions shall prevail.

2. SUPPLY OF THE SPECIFIED SERVICE

1.2

Intouch Advance Ltd shall be responsible for the procurement of and facilitating the supply of, the Specified Service to the Customer subject to the Contract. Any changes or additions to the Specified Service or the Contract must be agreed in writing by email or post to Intouch Advance Ltd and the Customer.

2.2

The Customer acknowledges that the Specified Service will be provided by the Supplier. Accordingly, except in so far as they are excluded or varied by these Conditions, the Supplier's Conditions shall be deemed to be repeated in these Conditions and in construing the same, and to the extent necessary to give full meaning to the same, the Supplier in the Supplier's Conditions shall be replaced by Intouch Advance Ltd and where Intouch Advance Ltd is identified in the Supplier's conditions as the customer it shall be replaced by "CUSTOMER".

2.3

Expressions defined in the Supplier's Conditions shall have, where the context admits in these Conditions, the meanings so defined.

2.4

The Customer shall at its own expense supply Intouch Advance Ltd with all necessary Input Material to allow Intouch Advance to provide the Specified Services and will ensure that all Input Material is accurate to the fullest extent possible. The Customer acknowledges that Intouch Advance Ltd will be unable to process any order where Input Material is incomplete.

2.5

The Customer shall at its own expense retain duplicate copies of all Input Material. Intouch Advance Ltd shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

2.6

Intouch Advance Ltd may correct any typographical or other errors or omissions in any Document relating to the provision of the Specified Service ensuring the Customer is notified of the said changes.

2.7

Intouch Advance Ltd may at any time by giving reasonable prior notice to the Customer make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

3. CHARGES

3.1

Subject to any special terms agreed, the Customer shall pay to Intouch Advance Ltd the amounts specified in Intouch Advance's invoices to the Customer and any additional sums which are agreed in advance between Intouch Advance Ltd and the Customer for the provision of the Specified Service

or which are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.

3.2

Intouch Advance Ltd shall be entitled to vary any sums specified in the Contract at any time in accordance with Supplier's Conditions. Intouch Advance Ltd shall not vary the amount to the customer by more than the Supplier's increased cost to.

3.3

On completion of the Initial Term Intouch Advance Ltd reserves the right, if the Contract is not renewed, to adjust the Customers charges to that of the Suppliers retail pricing.

3.4

All charges quoted to the Customer for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

3.5

Intouch Advance Ltd shall be entitled to invoice the Customer upon the Operational Service Date and thereafter in respect of rental at the beginning of each month quarter or year as agreed between the Customer and Intouch Advance and set out in the Contract or at other times agreed with the Customer.

3.6

The amounts specified in Intouch Advance's invoices to the Customer and any additional sums payable shall be paid by the Customer (together with any applicable Value Added Tax) within 30 days from receipt of Intouch Advance's invoice by the Customer (and receipt shall be deemed to take place 48 hours after Intouch Advance posted each invoice to the Customer having first properly prepaid and addressed the same).

3.7

If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with Clause 3.6 the customer shall before the invoice is due for payment contact Intouch Advance writing setting out the nature of its dispute including:

- the date and number of the disputed invoice;
- the amount in dispute;
- the reason for the dispute; and
- supporting documentation, as appropriate.

3.8

Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Clause 3.6.

3.9

If payment is not made on the due date, Intouch Advance Ltd shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at a daily rate of 5% above the Bank of England base rate.

3.10

If payment is not made on the due date Intouch Advance Ltd shall be entitled, without limiting any other rights it may have, to suspend the provision of the Specified Service until such time as all payments due and payable to Intouch Advance Ltd have been paid in full together with such sum as Intouch Advance Ltd may charge the Customer in respect of recommencing the provision of the Specified Service (the “Reconnection Fee”).

Intouch Advance Ltd will give a minimum 5 working days’ notice before suspension of service is implemented.

4. SUPPLIER’S EQUIPMENT

4.1

Intouch Advance Ltd shall use reasonable endeavours to procure that the Supplier commences to install the Supplier’s Equipment on the date and at the address agreed between Intouch Advance Ltd and the Customer and that either Intouch Advance Ltd or the Supplier informs the Customer when the installation is complete by means of a Handover Document forwarded to the Customer by post, fax or email.

4.2

The Customer shall be deemed to have accepted the Supplier’s Equipment if within forty-eight (48) hours of receipt of the Handover Document the Customer has not notified Intouch Advance Ltd or any defects in the Supplier’s Equipment.

4.3

The Customer must ensure that any equipment connected to or used with the service must be connected and used in accordance with any instructions, safety or security procedures applicable to the use of that equipment.

4.4

The Customer must ensure that any equipment that is attached (directly or indirectly) to the service is technically compatible with the service and approved for that purpose under any relevant legislation.

4.5

The Customer shall use its reasonable endeavours to procure that Intouch Advance Ltd is not in breach of any term of the Supplier’s Conditions in so far as they relate to the possession and use of the Supplier’s Equipment by the Customer during the life of the Contract.

4.6

In the event that Intouch Advance Ltd is unable to provide the Specified Service as a result of any action or omission by the Customer in relation to the possession or use of the Supplier’s Equipment which could reasonably be considered to have caused a hazard to the Specified Service then Intouch Advance Ltd shall be entitled to suspend the Specified Service by giving reasonable notice until such time as Intouch Advance Ltd thinks fit during which suspension the Customer shall continue to pay the full amount due under the Contract and at the end of such suspension the Customer shall pay to Intouch Advance Ltd the Reconnection Fee.

4.7

The Customer shall provide the Supplier with all reasonable access to the Supplier's Equipment for the purposes of maintenance as the Supplier may reasonably require upon the Supplier serving on the Customer reasonable notice.

5. WARRANTY

5.1

Intouch Advance Ltd/Intouch Advance Ltd Suppliers warrants that it will provide the Specified Service with all the reasonable skill and care of a competent telecommunications service provider and in accordance with Industry Best Practice.

5.2

Intouch Advance Ltd agrees it will use all reasonable endeavours to provide the Specified Service by utilising all current internal support functions.

6. LIMITATION OF LIABILITY

6.1

Intouch Advance Ltd shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, or arising from their late arrival or non-arrival, or any other fault of the Customer.

6.2

Intouch Advance Ltd/Intouch Advance Ltd Suppliers and the Customer accept unlimited liability for death or personal injury resulting from their negligence.

6.3

Intouch Advance Ltd and the Customer are not liable to each other either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data.

6.4

The liability of Intouch Advance Ltd in contract, tort, (including negligence) or otherwise in relation to this Contract is limited to one million pounds Sterling (£1,000,000) for any one incident or series of related incidents and to two million pounds Sterling (£2,000,000) for all incidents in any period of 12 months.

6.5

Neither party shall be deemed to be in breach of the Contract by reason of any event set out in Clause 8.7.

7. TERMINATION

7.1

The Contract shall come into force on the date of installation of the service set out in the Specification Sheet or requirement from the customer and shall continue in force for the duration of the Initial Term and thereafter unless or until terminated by either party giving relevant notice as per the Supplier's Conditions for that service.

7.2

In the event of the Customer terminating the Contract other than under Clause 7.3 the Customer shall be liable for early termination fees in accordance with the Supplier's early termination fees published in its then current price list. For the avoidance of doubt, in the event that this Contract is terminated under the provisions of Clause 7.1 (in accordance with the Supplier's Conditions) or 8.7 (as a result of a force majeure event) the Customer shall not be required to pay any sums for early termination.

7.3

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 14 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed (other than for the purposes of bona fide reconstruction or amalgamation).

7.4

In the event of service of notice of termination by either party for any reason Intouch Advantage Ltd shall invoice Customer for all sums due under this Contract and the Customer shall use all reasonable endeavours to promptly facilitate the return of the Supplier's Equipment to the Supplier.

7.5

This agreement or termination of individual services within the agreement can be ended by either party by giving the 90 days' notice in writing provided that the end of the notice period coincides with the end of the Minimum Period. All contracts will automatically enter a new 12 months contract on the anniversary date unless the above notice has been provided.

8. GENERAL

8.1

The terms set out in the Contract constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

8.2

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

8.3

No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.4

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

8.5

Intouch Advance Ltd shall use all reasonable endeavours to ensure that the Customer is notified of enhancements and new technologies to products where by the Customer could gain benefit by the introduction of such products.

8.6

During this Contract and for a period of twelve (12) months following the termination of the Contract (for whatever reason) neither party shall employ or engage directly or indirectly (without the other party's prior written agreement) nor make or seek to make any offer of employment or engagement to any of the other party's staff, including its sub-contractors, who have dealt with the party in the course of the negotiation, conclusion and performance of the Contract.

8.7

Neither party shall be liable for any breach of the Contract caused directly or indirectly by anything outside its reasonable control including, without limitation to the generality of the foregoing, war, hostilities, government action requirements or regulations, breakdown, delays in transportation, inability to obtain supplies, any form of labour dispute, fire, flood or act of God, provided that the party has promptly given written notice of such occurrence to the other party. If a default due to an event of force majeure shall continue in force for more than 30 days, then the party not in default shall be entitled to terminate the Contract by notice to the other party.

8.8

The Contract shall not be construed as creating a relationship of employer and employee, principal and agent or a partnership or joint venture between the parties.

8.9

Neither party to the Contract shall disclose to any third party details of the Contract without the prior written consent of the other party save that Intouch Advance Ltd shall be permitted to disclose details to the Supplier for the purposes of discharging its obligations under the Contract and for the same purposes both Intouch Advance Ltd and the Customer shall each be permitted to disclose details to their respective subsidiaries, holding company or subsidiaries of such holding company.

8.10

Intouch Advance Ltd and the Customer can transfer this Contract, with the written consent of the other. It is agreed that Intouch Advance Ltd can transfer this Contract to a Intouch Advance Ltd Group Company.

8.11

No term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.