

TERMS

1 General

1.1 In these terms and conditions ("**Terms**"), the following words will have the following meanings unless the context otherwise requires:

"Agreement"	the contract between Backbone and the Customer for the provision of Services incorporating these Terms, the Service Order(s) and Schedules;
"Backbone Equipment"	any equipment, including tools, systems, cabling or facilities, provided by Backbone to the Customer and used directly or indirectly in the supply of the Services (including any such items specified in the Service Order(s)), whether owned by or leased or licenced to Backbone but excluding any such items which are the subject of a separate written agreement between the Parties under which title passes to the Customer;
"Backbone Materials"	all documents, information, items and materials in any form, whether owned by Backbone or a third party and which are provided by Backbone to the Customer in connection with the Services;
"Charges"	the sums payable by the Customer for the Services as set out in the Service Order(s) and Schedule 1;
"Confidential Information"	<p>the terms of this Agreement and any commercial, financial, marketing, technical, trade-secrets, employee, customer, supplier or other confidential information (however recorded or preserved) relating to either Party in connection with this Agreement and disclosed by or on behalf of a Party to the other, whether such information is labelled as such or else which should reasonably to be considered as confidential because of its nature and the manner of its disclosure but Confidential Information does not include information which:</p> <ul style="list-style-type: none">a) was already known to the receiving party (without obligation to keep the same confidential) at the date of the disclosure;b) is after the date of disclosure lawfully acquired by the receiving party from a third party who is not subject to any obligation of confidentiality in respect of such information;c) is in or subsequently enters the public domain otherwise than by reason of the receiving party's neglect or breach of the restrictions set out in this or any other agreement; ord) is independently developed by the receiving party without access to any or all of the Confidential Information;
"Customer Equipment"	equipment, including tools, systems, cabling or facilities, provided by or on behalf of the Customer, which is used directly or indirectly in the supply of the Services (including any such items specified in the Service Order(s));

“Customer Materials”	all documents, information, items and materials in any form, whether owned by the Customer or a third party and which are provided by the Customer to Backbone in connection with the Services;
“Deliverables”	all products, materials and outputs developed by Backbone in relation to the Services and as specified in the Service Order(s), in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts), but excluding any Backbone Materials or Backbone Equipment;
“Effective Date”	means the date on which the Parties execute the first Service Order entered into between the Parties pursuant to this Agreement;
“Intellectual Property Rights”	patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, designs (registered or unregistered), rights in get-up, rights in goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world, together with all rights of action in relation to the infringement of any of the above;
“Service Order”	the service order form outlining the scope of the Services and/or Deliverables;
“Services”	any services that Backbone is to supply to the Customer as set out in the Service Order and Schedules and in accordance with the Agreement;
“Start Date”	is as set out in the applicable Service Order.

- 1.2 The Parties wish to enter into Service Orders from time to time and each Service Order shall be subject to these Terms and Schedules. These Terms along with the Service Order(s) and Schedules are hereby incorporated into and will form the Agreement between the Parties and accordingly any reference to this Agreement will include the Service Order(s), Terms and Schedules. Any terms and conditions which the Customer sends to Backbone or otherwise refers to will not be binding on Backbone unless Backbone has agreed to these terms in writing.
- 1.3 In the event of any conflict or inconsistency between a Service Order, the Terms and the Schedules, the Agreement will be interpreted based on the following descending order of hierarchy: (1) Service Order; (2) Terms; (3) Schedules.
- 1.4 Unless the context otherwise requires: i) words in the singular will include the plural and in the plural will include the singular; and ii) a reference to one gender will include a reference to the other genders.
- 1.5 A reference to a Party includes its personal representatives, successors or permitted assignees.
- 1.6 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision

includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- 1.7 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.8 No variation of this Agreement will be effective unless it is in writing and signed by the Parties or their authorised representatives. For the purposes of this Agreement, no variation of this Agreement will be effective if set out or otherwise confirmed by way of email.

2 Services

- 2.1 Any proposal or quotation in whatever form given to the Customer by Backbone is given subject to these Terms and does not constitute an offer to sell or supply. A Service Order will only become binding upon execution by both of the Parties or Backbone's commencement or execution of work pursuant to a Service Order (whichever is earlier).
- 2.2 Backbone will provide the Services and Deliverables (if applicable) as set out in the Service Order(s) and Schedules using the reasonable skill and care of an experienced IT service provider and will ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them under this Agreement. Without prejudice to the foregoing, the Customer acknowledges that the provision of Services and/or Deliverables may necessitate the installation of certain Backbone Equipment and/or other equipment within the Customer's premises (including without limitation to the communal riser, rooftop and basement) and accordingly, the Customer hereby agrees to such installation(s) as deemed reasonably necessary by Backbone.
- 2.3 The Services are provided at the Customer's request and the Customer accordingly accepts it is responsible for undertaking its own due diligence and verifying that the Services are suitable for its own requirements.
- 2.4 Backbone will use reasonable efforts to meet the performance dates specified in the Service Order and Schedules (as the case may be) but any such dates will be indicative and estimates only and accordingly Backbone shall not be liable for any failure to meet such performance dates, unless the Parties expressly agree otherwise in writing.
- 2.5 The Parties will comply with their respective obligations as set out in the Service Order(s), these Terms and the Schedules.
- 2.6 The Customer shall:
 - 2.6.1 co-operate with Backbone in good faith in all matters relating to the Services and promptly provide such information as may reasonably be required by Backbone in the provision of the Services and will ensure that such information is accurate in all material respects;
 - 2.6.2 promptly provide such access to the Customer's premises, equipment, facilities and data as may reasonably be required by Backbone in the provision of the Services including without limitation i) any Customer Equipment which the Customer shall ensure is in good working order and condition and is suitable for the provision of the Services; and ii) access to the communal riser, rooftop and basement within the Customer's premises. For

the avoidance of doubt, such access shall continue during the term of the Agreement and following termination (howsoever arising) insofar as is necessary to allow Backbone to remove any Backbone Equipment and/or Backbone Materials from the Customer's premises;

- 2.6.3 take all reasonable steps to ensure the health and safety of the Backbone personnel to the extent they are at the Customer's premises;
 - 2.6.4 keep and maintain the Backbone Equipment in good condition (including without limitation providing and maintaining the level of power, heating and air conditioning necessary to maintain the proper environment for the Backbone Equipment) and in accordance with Backbone's instructions from time to time and shall not dispose of or use the Backbone Equipment other than in accordance with Backbone's written instructions or authorisation;
 - 2.6.5 not and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the Backbone Equipment, without Backbone's prior written consent, or otherwise shall not take any action that causes the imposition of any lien or encumbrance on the Backbone Equipment;
 - 2.6.6 promptly notify Backbone if it reasonably believes or suspects that wrong assumptions have been made or otherwise wrong directions have been taken by Backbone;
 - 2.6.7 comply with such of Backbone's policies and procedures as deemed reasonably necessary by Backbone and as applicable, as set out in a Schedule to these Terms or as may be communicated to the Customer from time to time; and
 - 2.6.8 promptly notify Backbone in writing if the Customer suffers or is reasonably likely to suffer an event of insolvency (including bankruptcy, administration, receivership, liquidation, winding-up, voluntary arrangements or any similar event).
- 2.7 Neither Party shall engage in any activity, practice or conduct which would constitute either a UK bribery or tax evasion facilitation offence or a foreign bribery or tax evasion facilitation offence under applicable law (including the Criminal Finances Act 2017).
 - 2.8 To the extent Backbone's performance of its obligations under the Agreement is prevented or delayed in any way by any act or omission of the Customer or the Customer's employees, personnel, agents, sub-contractors, Backbone is not liable for such delay or non-performance.
 - 2.9 The Customer agrees not to, without the prior written consent of Backbone, at any time during the Agreement and for a period of six months following termination of the Agreement, employ, solicit, entice away or endeavour to employ, solicit or entice away any person with whom the Customer comes into contact with during the provision of the Services.

3 Charges and Payment

- 3.1 In consideration of the provision of Services by Backbone, the Customer will pay each invoice submitted to it by Backbone in full and cleared funds within 30 days of the

invoice date to a bank nominated by Backbone from time to time. Unless otherwise agreed in writing between the Parties, Charges are payable by direct debit.

- 3.2 Unless specified otherwise, all Charges will be in Pound Sterling (GBP), exclusive of VAT which is payable by the Customer at the prevailing rate and time for payment is of the essence.
- 3.3 Without prejudice to any other right or remedy that Backbone may have, if the Customer fails to pay Backbone on the relevant due date Backbone reserves the right to:
 - 3.3.1 charge interest on such sum in accordance with the statutory interest rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment;
 - 3.3.2 suspend provision of any or all part of the Services until payment has been made in full by the Customer; and/or
 - 3.3.3 disconnect and/or remove any Backbone Equipment from the Customer's premises.
- 3.4 Notwithstanding anything to the contrary, all Charges payable to Backbone under this Agreement will become due immediately on termination of the Agreement, howsoever arising.
- 3.5 The Customer will pay all amounts due under this Agreement in full without any deduction, set-off, counterclaim or withholding except as required by law. Backbone may at any time, without limiting any other rights or remedies it may have, set off any liability of the Customer to Backbone against any liability of Backbone to the Customer.
- 3.6 Upon completion of the Initial Term for a particular Service (as set out in a Service Order), Backbone reserves the right, by giving the Customer prior written notice, to increase the Charges (for such Services) once a year in line with the percentage increase in the Retail Price Index in the preceding 12 month period plus 3%
- 3.7 If the Customer reasonably disputes any portion of an invoice, the Customer must pay the undisputed portion of the invoice and submit a written claim for the disputed amount promptly upon becoming aware of the dispute and in any event within thirty (30) days of the relevant invoice date.
- 3.8 In the event of a dispute regarding any amount on any invoice, the parties shall resolve the dispute in accordance with clause 10 and if a dispute is resolved against the Customer, the Customer shall pay such amounts plus any accrued interest within seven (7) working days.
- 3.9 Without prejudice to the provisions in a particular Service Order and to the extent the Services include the supply of telephony services, the Customer acknowledges and agrees it will be liable to pay for such charges in accordance with standard tariff rates (such tariff rates to be provided at the Customer's request) and agrees to pay such charges accordingly.

4 SLA and Service Credits

- 4.1 To the extent the Services are subject to the certain service level commitments, these shall be set out in the relevant Schedule(s) attached to this Agreement.
- 4.2 Notwithstanding anything to the contrary, any service credits provided to the Customer shall be the Customer's sole and exclusive remedy in respect of Backbone's failure to meet the particular service level in question.

5 Intellectual Property

- 5.1 Subject to the exclusion of any Customer Materials and Customer Equipment, all Intellectual Property Rights in the Backbone Materials and Backbone Equipment will be owned by and remain vested in Backbone or its licensors (as the case may be). Backbone hereby grants the Customer a royalty-free, worldwide, non-exclusive, non-transferable licence during the term of this Agreement to the Backbone Materials and Backbone Equipment to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the Parties. Notwithstanding anything to the contrary, to the extent Backbone terminates the Agreement pursuant to clause 8, the licence pursuant to this clause will automatically terminate.
- 5.2 All Intellectual Property Rights in the Customer Materials and Customer Equipment will be owned by and remain vested in the Customer or its licensors (as the case may be). The Customer hereby grants to Backbone a royalty-free, worldwide, non-exclusive, non-transferable licence during the term of this Agreement to the Customer Materials and Customer Equipment to such extent as is necessary to enable Backbone to provide the Services and Deliverables in accordance with the terms of the Agreement.
- 5.3 Backbone warrants that the receipt and use of the Services and Deliverables by the Customer in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party and will indemnify the Customer in full against all claims, costs, expenses or liabilities arising out of or in connection with a claim by a third party that the use of the Services and/or Deliverables infringes the Intellectual Property Rights of that third party ("**IPR Claim**"), except where such IPR claim:
 - 5.3.1 results from the unauthorised modification of the Services and/or Deliverables by or on behalf of the Customer;
 - 5.3.2 is caused by the Customer's use of the Services and/or Deliverables in combination with software, hardware or other technology or deliverables not supplied or approved by Backbone; or
 - 5.3.3 arises as a result of the Customer's use of the Services and/or Deliverables in breach of this Agreement.
- 5.4 The Parties agree that in respect of the indemnity given in clause 5.3:
 - 5.4.1 the Customer shall give written notice to Backbone of any claims or proceedings immediately following receipt of them;
 - 5.4.2 the Customer shall make no admission of liability and shall give Backbone the sole authority to settle the claims or proceedings at Backbone's cost;

- 5.4.3 the Customer shall give Backbone all reasonable help and cooperation in connection with the claims or proceedings, at Backbone's cost and expense.
- 5.5 The Customer will indemnify Backbone in full against all claims, costs, expenses or liabilities arising out of or in connection with a claim by a third party that the use of the Services and/or Deliverables infringes the Intellectual Property Rights of that third party, where such claim arises as a result of clauses 5.3.1- 5.3.3 (inclusive).

6 Confidentiality

- 6.1 Each Party will, during the term of this Agreement and for a period of 5 years after termination of this Agreement (howsoever arising) keep in strict confidence all Confidential Information concerning a Party's business, affairs, services, products, customers, clients, or suppliers except as permitted in clause 6.2.
- 6.2 Each Party is permitted to disclose the other Party's Confidential Information :
- 6.2.1 to its employees, officers, directors, sub-contractors or professional advisers ("**Authorised Representatives**") to the extent such persons have a need to know such information in carrying out its obligations pursuant to or in connection with this Agreement and provided that it informs such Authorised Representatives of the confidential nature of information prior to disclosure and at all times remains responsible for such Authorised Representatives' compliance with the confidentiality obligations set out in this clause;
- 6.2.2 to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible;
- 6.2.3 to the extent such information is already in the public domain or enters the public domain through no act or default on the part of the receiving Party.
- 6.3 Each Party agrees that it shall not use any Confidential Information regarding the other Party for any purpose other than the performance of its respective obligations or enforcing its rights under the Agreement or as otherwise permitted hereunder, nor copy or provide any such Confidential Information to any third party without the prior written consent of the other Party's Authorised Representative.

7 Limitation of Liability

- 7.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 7.2 Nothing in this Agreement excludes or limits either Party's liability for:
- 7.2.1 death or personal injury caused by negligence;
- 7.2.2 fraud or fraudulent misrepresentation; or
- 7.2.3 any other liability which cannot be limited or excluded by applicable law.
- 7.3 Subject to clause 7.2, neither Party shall be liable whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation, restitution, or otherwise for any loss of profit; loss of revenue; depletion or damage to goodwill or reputation; loss or corruption of data or information; or any special, indirect or

consequential loss, costs, damages, charges or expenses however arising under this Agreement.

- 7.4 In no event will Backbone be liable to the Customer or to any other person for any loss, cost or damage caused by or related to the improper use or maintenance of the Backbone Equipment by the Customer or by third parties who are provided access by the Customer to the Backbone Equipment in violation of the Agreement.
- 7.5 Subject to clause 7.2, Backbone's total aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution, or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in each 12 month period be limited to the total fees paid by the Customer for the Services during the 6 month period immediately preceding the date on which the claim arose, subject to a maximum of five hundred thousand pounds (£500,000).

8 Term and Termination

- 8.1 The Agreement shall commence on the Effective Date and shall, unless otherwise terminated in accordance with this clause 8, continue and remain in force until termination or expiry of all the Service Orders entered into between the Parties (after which time the Agreement shall automatically terminate).
- 8.2 Without prejudice to any other rights or remedies to which a Party may be entitled under these Terms, a Party shall be entitled to terminate the Agreement with immediate effect on written notice to the other Party without liability in the event that:
- 8.2.1 the other Party has a winding up petition presented, enters into liquidation (otherwise than for the purposes of amalgamation or reconstruction and whether compulsorily or voluntarily), ceases to trade, makes an arrangement with its creditors, petitions for an administration order, has a receiver or manager appointed over any of its assets or generally becomes unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;
 - 8.2.2 the other Party is in material breach of any other provision of the Agreement and, if the breach is capable of remedy, has failed to remedy that breach within 30 days;
 - 8.2.3 where the Customer is the other Party and the Customer fails to pay an invoice in accordance with the terms of the Agreement;
 - 8.2.4 where the Customer is the other Party and the Customer is found guilty of serious misconduct, fraud or dishonesty; or
 - 8.2.5 where the Customer is the other Party and there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 8.3 Unless expressly set out in the applicable Service Order or otherwise agreed in writing between the Parties, each Service Order shall commence on the applicable Start Date and the relevant term for each of the Services listed shall continue for the period as set out in the Service Order ("**Initial Term**") and thereafter each Service listed in the Service Order term shall automatically be renewed for successive periods

of 12 months (each a “**Renewal Period**”) unless either Party notifies the other of termination, in writing, at least 90 days before the end of the Initial Period or Renewal Period (as the case may be) in which case the term for the particular Service in question shall terminate upon the expiry of the applicable Initial Term or Renewal Period. For the avoidance of doubt, the termination or expiry of a particular Services item in a Service Order shall not affect the validity or continuance of the rest of the Services listed or the Service Order itself.

- 8.4 The Customer is entitled to terminate a Service Order at any time on 90 days’ written notice to Backbone after which point the provision of Services and/or Deliverables by Backbone shall cease however the Customer shall nonetheless remain liable for and promptly pay to Backbone in full all charges, costs and other expenses as set out in the Service Order up until the end of the applicable Initial Term or Renewal Period (as the case may be). For the avoidance of doubt and in the event the Customer should seek to terminate a Service Order prior to the relevant Start Date, the Customer shall nonetheless be liable and promptly pay to Backbone in full all charges, costs and other expenses as set out in the Service Order up until the end of the applicable Initial Term.
- 8.5 The Parties acknowledge and agree termination or expiry of a Service Order shall not affect the validity or continuance of any other Service Order pursuant to this Agreement, or the Agreement itself.
- 8.6 Unless required to be retained by law, on termination of the Agreement (howsoever arising) each Party will promptly return or destroy (at the disclosing Party’s option) and make no further use of any materials, equipment or other property and all copies of them) belonging to the disclosing Party. In addition, Backbone shall be granted permission and access to the Customer’s premises in order to remove any remaining Backbone Equipment and Backbone Materials.
- 8.7 In the event the Agreement is terminated by a Party pursuant to clause 8.2, any Service Orders still in continuance shall also terminate in line with the Agreement. In addition, where Backbone terminates the Agreement pursuant to clause 8.2, the Customer shall be liable and promptly pay to Backbone in full all charges, costs and other expenses as set out in the Service Orders up until the end of the applicable Initial Term or Renewal Period (as the case may be). Where the Customer terminates the Agreement pursuant to clause 8.2, the Customer shall be liable and promptly pay to Backbone all charges, costs and other expenses in respect of the Services provided by Backbone (pursuant to Service Orders) up until the effective date of termination of the Agreement.
- 8.8 Termination of a Service Order or the Agreement, howsoever arising, shall not affect or prejudice the accrued rights of the Parties as at termination (or the continuation of any provision expressly stated to survive, or implicitly surviving, termination).

9 Data Protection

- 9.1 Both Parties agree to comply with their respective obligations under applicable data protection legislation in force from time to time including without limitation the General Data Protection Regulation ((EU) 2016/679) (GDPR), UK GDPR and the Data Protection Act 2018. “UK GDPR” means the GDPR as such regulation is adopted into the law of the United Kingdom pursuant to the European Union (Withdrawal Act) 2018 and as amended by the Data Protection Act 2018 and any successor regulation or law.

- 9.2 To the extent it is agreed between the Parties in writing that Backbone, as part of the provision of Services, is required to process personal data as a data processor, the provisions in Schedule 2 shall apply and the parties shall ensure the processing details in Schedule 2 are completed.

10 Dispute Resolution

- 10.1 Either Party shall be entitled to serve a notice ("**Dispute Notice**") notifying the other Party that there is a matter in dispute in relation to or otherwise in connection with the Agreement. The Parties shall have a period of 14 days from the date of the Dispute Notice to resolve the dispute. If following the 14 day period the matter has not been resolved, the Parties will in good faith seek to resolve that dispute through mediation.
- 10.2 Nothing in this clause shall prevent either Party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary.

11 Force Majeure

- 11.1 Backbone will not in any circumstances have any liability to the Customer under the Agreement if performance of its obligations under the Agreement is rendered impossible by acts, events, omissions or accidents beyond its control including, without limitation, acts of God or natural disaster; strikes; lock-outs or other industrial disputes; loss of internet connectivity; failure of a utility service or transport network; war; riot; civil commotion; terrorist attacks; malicious damage; compliance with any law or governmental order; rule; regulation or direction (each a "**Force Majeure Event**").
- 11.2 Subject to Backbone promptly notifying the Customer in writing of the cause and likely duration of the delay or non-performance and provided that Backbone uses reasonable efforts to limit the effect of such Force Majeure Event, such delay or failure will not constitute a breach of this Agreement and the time of performance of such obligations will be extended accordingly. Notwithstanding this, to the extent performance is not resumed within 90 days after such notice, either Party will have the right to terminate the Agreement on 14 days' notice.

12 Status of the Parties

- 12.1 Each of the Parties agrees that it has the power and authority to enter into the Agreement and has obtained all necessary approvals to do so.
- 12.2 The relationship of Backbone to the Customer will be that of independent contractor acting at arm's length and nothing contained in this Agreement will render Backbone or any of its staff an employee, worker, agent or partner of the Customer. Any employees working for Backbone are not employees of the Customer and as such, they are not entitled to any employment related benefits from the Customer.

13 Access to the Internet & Contents of Communications

Through the Services, Backbone may provide the Customer with access to the Internet but Backbone does not operate, control or monitor and will have no liability or responsibility for the content of any communications or other information transmitted via the Internet or the Services.

14 Entire Agreement

- 14.1 This Agreement constitutes the entire agreement between the Parties in respect of the Services and/or Deliverables set out in the Service Orders and supersedes and

extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 14.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement, provided always that nothing in this clause will limit or exclude any liability for fraud.

15 Assignment and Sub-contracting

- 15.1 Backbone will be entitled to assign, transfer, sub-contract or in any other way make over all or any of its rights or obligations under this Agreement to a third party.
- 15.2 The Customer may not assign, transfer, charge, sub-contract or in any other way make over all or any of its rights or obligations under the Agreement without the prior written consent of Backbone.

16 Third Party Rights

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

17 Notices

- 17.1 Any notice to be served on either of the Parties by the other shall be in writing and sent by pre-paid recorded delivery, registered post or by email to the address of the relevant Party shown on at the start of this Agreement or such other physical or electronic address as may be notified by one Party to the other from time to time. Notices shall be deemed to have been duly given:

17.1.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;

17.1.2 when sent by email, provided no notice of non-delivery is received;

17.1.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid;

17.1.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In the case of Backbone, notices by email may be sent to ceasedesk@backboneconnect.co.uk

18 Publicity

Backbone reserves the right to reference the Customer, including the Customer's logo, as a client or customer of Backbone on its website or other marketing materials in connection with Backbone' services.

19 Severance

- 19.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20 Waiver

No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

21 Rights & Remedies

Except as otherwise expressly provided in this Agreement, all rights contained in this Agreement and all remedies available to either Party for breach of this Agreement are cumulative and may be exercised separately or concurrently. The exercise of any one right or remedy will not be deemed an election of such right or remedy to the exclusion of other rights and remedies. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

22 Governing Law & Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English courts in respect thereof.

SCHEDULE 1 – CHARGES

Unless specified otherwise in a Service Order, the Services are provided on a fixed-cost basis and Charges are exclusive of any hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Backbone in connection with the Services. Such expenses will be invoiced by Backbone to the Customer and are payable by the Customer, provided these have been agreed by the Customer in advance of being incurred.

To the extent a Service Order specifies that Services are to be provided on a time-and-materials basis:

- A) the Charges payable for the Services will be calculated in accordance with Backbone's standard daily fee rates as set out in the applicable Service Order (or as otherwise agreed in writing between the Parties from time to time);
- B) Backbone's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.30 pm on weekdays (excluding weekends and UK public and bank holidays);
- C) Backbone will be entitled to charge at an overtime uplifted rate of 150% of the normal rate for time worked on weekdays (excluding weekends and UK public and bank holidays) outside the hours referred to in paragraph B) on a pro-rata basis;
- D) Backbone will be entitled to charge at an overtime uplifted rate of 200% of the normal rate for time worked on weekends and/or UK public and bank holidays; and
- E) Backbone will invoice the Customer in arrears for the Charges for time, expenses and materials (together with VAT where appropriate).

The Charges are exclusive of any hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Backbone in connection with the Services. Such expenses will be invoiced by Backbone to the Customer and are payable by the Customer, provided these have been agreed by the Customer in advance of being incurred.

SCHEDULE 2 - DATA PROCESSING

Processing by Backbone	
1	Scope
	This Schedule applies to Backbone's processing of data on the Customer's behalf as part of the provision of Services under the Agreement. With regard to such processing, the Customer is the controller of the personal data and Backbone is the processor of the data. This Schedule does not apply where Backbone is the controller of personal data.
2	Nature and purpose of processing
	<p>Backbone processes personal data in order to carry out the provision of Services under the Agreement.</p> <p>The personal data is processed as follows:</p> <ul style="list-style-type: none"> - Collection of data - Recording of data - Organisation of data - Structuring of data - Storage of data - Adaptation of data - Alteration of data - Combining data - Erasure of data - Destruction of data
4	Duration of the processing
	Personal data will be held and processed for the duration of the Agreement and will be securely deleted/destroyed after such time.
5	Types of personal data
	Name, surname, email address, telephone number, employment address.
6	Categories of data subject
	With respect to the Customer, its: employees, officers and directors, vendors, consultants, contractors, contact persons, business associates.
7	Obligations and rights in relation to the personal Data
	This is as set out in this Schedule.

1. Definitions

Data Protection Legislation means all applicable laws and regulations relating to the processing of Personal Data and privacy as may be applicable from time to time, which at the date of this Agreement means the GDPR (EU General Data Protection Regulation 2016/679),

UK GDPR, Data Protection Act 2018 and any successor legislation or as may be updated or amended from time to time.

“Controller”, “Processor”, “Data Subject”, “Personal Data” and “Processing” shall have the same meaning as in the in the Data Protection Legislation, and their cognate terms shall be construed accordingly.

“Applicable Laws” means (for so long as and to the extent that they apply to Backbone) the law of the European Union, the law of any member state of the European Union and/or domestic UK Law.

“UK GDPR” means the GDPR as such regulation is adopted into the law of the United Kingdom pursuant to the European Union (Withdrawal Act) 2018 and as amended by the Data Protection Act 2018 and any successor regulation or law.

2. Data protection

- 2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation in the processing of Personal Data. This clause is in addition to and does not relieve, remove or replace a party's obligations under the Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is Controller and Backbone is Processor. The table above sets out the scope, nature and purpose of processing by Backbone, the duration of the processing, types of personal data and categories of Data Subject.
- 2.3 Without prejudice to the generality of clause 2.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Backbone for the duration and purposes of this Agreement.
- 2.4 Without prejudice to the generality of clause 2.1, Backbone shall, in relation to any Personal Data processed in connection with the performance by Backbone of its obligations under this Agreement:
 - 2.4.1 process that Personal Data only on the written instructions of the Customer unless Backbone is required by Applicable Laws to otherwise process that Personal Data;
 - 2.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 2.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 2.4.4 not transfer any Personal Data outside of the UK or European Economic Area unless the following conditions are fulfilled:

- a) the Customer or Backbone has provided appropriate safeguards in relation to the transfer; and
 - b) Backbone complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.
- 2.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.4.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 2.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the Personal Data; and
- 2.4.8 maintain complete and accurate records and information to demonstrate its compliance with this Schedule.
- 2.5 The Customer consents to Backbone appointing a third-party processor of Personal Data (such as a payment processor) under this Agreement. Backbone confirms that it has entered or (as the case may be) will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this Schedule. As between the Customer and Backbone, Backbone shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Schedule.
- 2.6 Backbone may, at any time on not less than 30 days' written notice to the Customer, revise this Schedule as deemed necessary for the purpose of compliance with Applicable Laws.

SERVICE LEVEL AGREEMENT

DEFINITIONS

Backbone: Backbone

SLA: Minimum Levels of Service agreed within this Customer Master Agreement.

Off-Net Traffic: Traffic that commences from or terminates to any location which is not on the backbone network.

On-Net Traffic: Traffic that commences from and terminates to a location which is on the Backbone network.

Receive Traffic: Traffic from any origination point that is received by Customer from the Backbone network.

Send Traffic: Traffic from any origination point that is sent by Customer onto the network.

Contracted Response Time: The Contracted Response Time is the maximum number of hours elapsed from the moment that the customer has logged a call (evidenced by receipt of a call number) to the time at which the technician is either on-site or available remotely ready to commence resolution of the problem.

Contracted Resolution Time: The Contracted Resolution Time is the maximum number of hours elapsed from the moment the technician is In Attendance until the problem has been resolved.

SERVICE LEVEL COMMITMENTS

Services are subject to the following Service Level Commitments. In the event Backbone does not achieve a particular Service Level in a particular period, Backbone will issue a credit to Customer as set forth below upon Customer's request. To request a credit, Customer must contact Backbone Customer Service within five (5) days of the end of the period for which a credit is requested. In no event shall the total amount of credits issued to Customer per period exceed the periodic recurring charge for the affected Service.

NETWORK AVAILABILITY SLA

The Availability SLA for On-Net Traffic is 99.9%. The Service is available if the service is available to send and receive traffic. In the event that the Service becomes unavailable for reasons other than an Excused Outage, Customer will be entitled to a service credit off of the Periodic Recurring Monthly Revenue for the affected Service based on the cumulative unavailability of the affected Service in a given period as set forth in the following table:

Achieved Availability	Service Credit
100%	None
≥99.9% - ≥99.3%	5%
<99.3% - ≥96.8%	10%
<96.8%	15%

NETWORK PACKET LOSS SLA

The Packet Delivery SLA for On-Net Traffic is 99.9%. Packet Delivery is the average number of Internet Protocol (IP) packets of information that traverse the Backbone network and are delivered by Backbone to the intended On-Net destination in a month. In the event the Packet Delivery SLA is not achieved for reasons other than an Excused Outage Customer will be entitled to receive a service credit equal to the charges for one (1) day of the MRC for the affected Service, up to a monthly maximum credit of one (1) day per calendar month.

CIRCUITS

The Availability SLA for circuits is set out below. The circuit is available if the circuit is available to send and receive traffic. In the event that the circuit becomes unavailable for reasons other than an Excused Outage, Customer will be entitled to a service credit off of the Periodic Recurring Monthly Revenue for the circuit based on the cumulative unavailability of the affected Service in a given period as set forth in the following table

Circuit Type: Ethernet	
Achieved Availability	Service Credit
≥99.8%	None
<99.8% - ≥99.3%	5%
<99.3% - ≥96.8%	10%
<96.8%	15%

Circuit Type: Leased Line	
Achieved Availability	Service Credit
≥99.8%	None
<99.8% - ≥99.3%	5%
<99.3% - ≥96.8%	10%

Circuit Type: Ethernet First Mile	
Achieved Availability	Service Credit
≥98.8%	None
<98.8% - ≥98.2%	3%
<98.2% - ≥96.58%	3%
<96.8%	7%

ADSL SLA

As a standard supply ADSL is supplied to Backbone by BT and as such carry no Service Level Agreement. An optional chargeable SLA is available and if specifically detailed on a service order then the following SLA will apply:

Site Type: ADSL and SDSL (Enhanced Care)	
Achieved Availability	Service Credit
≥98.5%	None
<98.5% - ≥97.5%	1%
<97.5% - ≥96.5%	2%
<96.5%	3%

MPLS

The Availability SLA for MPLS On-Net Traffic is 100%. The Service is available if the service is available to send and receive traffic. In the event that the MPLS core Service becomes unavailable for reasons other than an Excused Outage, Customer will be entitled to a service

credit off of the Periodic Recurring Monthly Revenue for the affected Service based on the cumulative unavailability of the affected Service in a given period as set forth in the following table:

Achieved Availability	Service Credit
100%	None
<99.9% - ≥99.3%	5%
<99.3% - ≥96.8%	10%
<96.8%	15%

COLOCATION

ENVIRONMENT SLA - POWER

Power: The Availability Service Level for Backbone provided power to the Colocation Space is 99.9%. In the event of any power outage for reasons other than Customer actions or omissions. Customer will be entitled to Service Credits detailed under Environment Service Credits.

Humidity: Backbone shall maintain the Colocation Area in which the Colocation Space is located (but shall not be obligated to maintain the Colocation Space itself) with a relative humidity in the range of 46.5% to 53.5% for 100% of the time Backbone supplies Service.

Temperature: Backbone shall maintain the Colocation Area in which the Colocation Space is located (but shall not be obligated to maintain the Colocation Space itself) with a maximum temperature of 27 degrees Celsius.

In the event of Backbone failing in any of its Environment SLA's then the Customer will be entitled to receive a service credit equal to the charges for one (1) day of the Periodic Recurring Revenue for the affected Colocation Space (with a maximum of a one (1) day credit for all instances of non-performance of any Environment SLA in any twenty four (24) hour period).

RESPONSE / REPAIR TIME SLA

All requests for support will either be answered within two minutes or with an opportunity for Customer to leave a message. A request for service will be considered accepted once it has been logged on the system and an appropriate Call Number allocated and communicated to Customer "Service Call". Backbone will use all commercially reasonable endeavours to

provide a resolution for a “Service Call” within the Contracted Response Time and Contracted Resolution Time agreed below:

	Contracted Response Time	Contracted Resolution Time
On-Net Fault	2 Hours	4 Hours
Off-Net Fault	4 Hours	8 Hours
Managed Equipment	4 Hours	8 Hours
ADSL	None	None
ADSL (with SLA option)	4 Hours	End of Next Business Day
Remote Hands	2 Hours	None

Major Incidents

A major incident is defined as one that is assessed by the Service Desk as URGENT and is one that either effects multiple customers or multiple sites for a customer. Once an incident has been identified as a Major Incident Backbone Connect will invoke the Major Incident process.

Service Complaints

Whilst Backbone Connect take every step to ensure that our services are delivered accurately and within agreed timescales, we understand that there may be instances when a more formal process is required. The Backbone Connect Service Complaints procedure can be obtained from your Customer Success manager or the Service Delivery manager. This documents outlines the process in which to make a complaint and the timelines you can expect the complaint to be dealt with .

SERVICE DESK FUNCTION

All incidents must be logged on our service desk and depending on the information provided (Actions Taken, Priority and Severity) the Incidents will be allocated accordingly and responded to using the following guidelines:

Service Desk Operational Times:

Backbone operate a 24x 7 Service desk.

Backbone will provide standard support during the following times:
 Business hours : 9am-5:30pm (Monday to Friday, exc Bank Holidays)
 Outside Business Hours : Time outside above

Business Hours Response Times:

Priority	Severity	Example	Response
High	Critical Impact	Business is critically impaired by a loss of service - The Customer server or network is unavailable or where a loss of business function is occurring. This could be where multiple users are affected or can also be applied to key services that are involved in time critical operations.	15 Minutes
Medium	Medium Impact	Business is partially impaired by a loss of service – A component or service may be unavailable or not performing correctly. The user(s) may be able to work around the problem without major impact.	2 Hours
Low	Low Impact	Business function is unaffected - Typically this is for scheduled activities and for implementing additional requirements.	24 Hours

Outside Business Hours Response Times

Priority	Severity	Example	Response
High	Critical Impact	Business is critically impaired by a loss of service - The Customer server or network is unavailable or where a loss of business function is occurring. This could be where multiple users are affected or can also be applied to key services that are involved in time critical operations.	1 hour
Medium	Medium Impact	Business is partially impaired by a loss of service – A component or service may be unavailable or not performing	2 Hours

		correctly. The user(s) may be able to work around the problem without major impact.	
Low	Low Impact	Business function is unaffected - Typically this is for scheduled activities and for implementing additional requirements.	24 Hours