

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.

CUSTOMER: the customer whose details are specified in the Order Form

CUSTOMER FACILITIES: the systems, software, equipment, utilities systems and connections, network communications, telecommunications connections, fixtures, and other items of a similar nature at the Site. **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.

IP RIGHTS: 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 FORM: 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.

SUPPER: means Incom Business Systems Limited.

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. DURATION AND SCOPE OF THIS AGREEMENT

2.1 Until termination for whatever reason, the supplier agrees to provide the Service to the Customer in accordance with this Agreement and in consideration, the Customer agrees to use the service in accordance with this Agreement and pay the Charges when due.

2.2 This agreement shall commence on the commencement date specified on the Order Form and Incom shall continue to provide the services for either the minimum period being 60 months (if no such other period is set out on the Order Form) and thereafter continuing for a further 60 months (for any other such period as set out on the Order Form) with each further period starting on the anniversary of the commencement date unless terminated in accordance with Paragraph 2.3.

2.3 Each party may terminate this Agreement on not less than 90 days notice in writing to expire either at the end of the minimum term or at the end of the period of 60 months.

2.4 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).

2.5 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.

2.6 Each Order or acceptance of a quotation by the Customer from Incom shall be deemed to be an offer by the Customer to proceed subject to these conditions.

2.7 Any variation to these Conditions and any representations about the Equipment or Services shall have no effect unless expressly agreed in writing and signed by a Director of Incom.

3.0 MAINTENANCE AND REPAIRS

3.1 During the period of the Agreement, in consideration of the payment of the maintenance charge, Incom shall as soon as is reasonably practicable after notification in accordance with Clause 9.1, provide a service to carry out during normal business hours, any maintenance of and repairs of the Telephone System and equipment named on the front of this Agreement as shall be necessary, as a result of the wear and tear arising from the proper use of the equipment, (including the provision of any necessary materials and spare parts, save for consumable items which will be charged for in accordance with Incom's current list price).

3.2 All maintenance, repairs or replacements may be carried out at the premises where the equipment is installed or elsewhere at the discretion of Incom.

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

4.0 CUSTOMER FACILITIES:

4.1 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.

4.2 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.

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

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

5.0 TERMS OF PAYMENT

5.1 Payment of sums due from the Customer to Incom shall be made within 14 days of receipt of an invoice from Incom to be paid in Pounds Sterling.

5.2 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.

5.3 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.

5.4 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.

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

6.0 CHARGES:

6.1 The Annual Maintenance Charge shall be the charge specified on the front page of this document. For each subsequent year during the continuation of this agreement the Annual Maintenance charge shall be set in accordance with the supplier's current charges at the beginning of that year for the type and quantity of equipment specified in the Order Form.

6.2 The Annual Maintenance Charge for each year during which this Agreement continues shall be paid before the date on which that year begins together with any applicable VAT or other tax.

6.3 If the Customer gives notice that they wish to terminate the contract before the expiry of the minimum term referred to in clause 2.3 then the Supplier shall be entitled to liquidated damages calculated in the following manner, which the parties agree to be a genuine attempt to pre-estimate the Supplier's loss in such circumstances:

6.3.1 If the minimum term is for 36 months, liquidated damages shall be calculated as:

6.3.1 (a) if the contract is to terminate within 12 months of the commencement date, the Supplier shall be entitled to be paid in full for the fees due for the first year of the contract and 80% of the fees due for the second and third years of the contract, and

6.3.1 (b) if the contract is to terminate more than 12 months from the commencement date but less than 24 months from the commencement date, the supplier shall be entitled to be paid in full for each of the first two years of the contract and 75% of the fees due for the third, fourth and fifth years of the contract.

6.3.1 (c) if the contract is to terminate more than 24 months from the commencement date but less than 36 months from the commencement date, the supplier shall be entitled to be paid in full for each of the first three years of the contract and 70% of the fees due for the fourth and fifth years of the contract, and

6.3.1 (d) if the contract is to terminate more than 36 months from the commencement date but less than 48 months from the commencement date, the supplier shall be entitled to be paid in full for each of the first four years of the contract and 70% of the fees due for the final year of the contract.

6.3.2 If the minimum term is for 60 months, liquidated damages shall be calculated as:

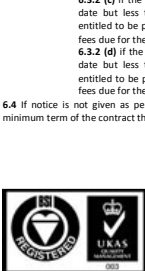
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6.4 If notice is not given as per paragraph 2.3 and the contract is either in the last year or after the minimum term of the contract then payment is due up to the anniversary of the following year of cover.



Registered in England No 2437211

VAT No: 519 3238 45

BSI Certificate of Registration FS00448

7.0 EXCLUSIONS

7.1 Unless specified in the equipment section of the front page of this Agreement, this Agreement does not cover any other item such as but not limited to: overhead, underground or external cabling; Two wire Telephone handsets; call loggers, voicemail, battery back-up, call loggers, voicemail, battery back-up, dex and other additional equipment.

7.2 Any maintenance, repairs, replacements or customer visits caused other than by fair wear and tear, (including diagnostic checks and alterations made by remote access) may be carried out at the Customer's expense at Incom's current level of charges, including but not limited to:

7.2.1 accidental damage, lightning strike, neglect or Abuse;

7.2.2 use of equipment in excess of any maximum usage specified by the manufacturer;

7.2.3 environmental issues including but not limited to failure of electrical power, power surges, air conditioning;

7.2.4 movement or relocation of the equipment not performed by Incom;

7.2.5 hardware, accessories, software or other devices not referred to in the front page of this Agreement;

7.2.6 Furnishing of the equipment with accessories or attachments, painting or finishing the equipment or removing accessories or attachments.

7.3 The response time for these faults will not be guided by the service level shown on the front of this Agreement.

7.4 This Agreement does not cover fault or defect occurring in any equipment not supported and/or supplied by Incom including but not limited to network line faults in BT or other third party equipment and facilities.

7.5 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 WRITING

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.

8.3 The Supplier may adjust the Annual Maintenance Charge if the Equipment is altered. In this event, the Customer shall sign a supplementary contract (to include the new Equipment) in accordance with clause 6.1.

9.0 CUSTOMER RESPONSIBILITIES AND LIABILITIES

9.1 The customer shall notify Incom either orally or in writing as soon as possible of any fault in the Equipment or of any work or maintenance that may be necessary. Incom may at its option charge for any repairs, faults or damage that have arisen as a result of the Customer's failure to notify Incom promptly.

9.2 The Customer shall not allow the Equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by Incom in relation to the operation and care of the Equipment. Incom may at its own option charge for any repairs carried out due to faults or damage that have been caused by such moving, interference or tampering, or by any failure by the Customer to comply with the maintainer's directions.

9.3 The Customer shall:

9.3.1 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.

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

9.3.3 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.

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

9.3.5 Pay all charges invoiced by Incom;

9.3.6 ensure that adequate electrical power is supplied to the Equipment;

9.3.7 Store and maintain Equipment in accordance with Documentation;

9.3.8 shall give the supplier and it's representatives unhindered access to the Equipment and shall at its expense maintain mains electric supply and other facilities and co-operation as may be necessary for the proper and prompt repair or maintenance of the Equipment under this Agreement;

9.3.9 use only media and consumables approved by the manufacturer or by Incom in writing (Incom's approval not to be unreasonably withheld);

9.3.10 comply with all statutory requirements, bye-laws, obligations, regulations, recommendations or instructions relating to the use and or testing of the Equipment;

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

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

9.4 The Customer is solely responsible for maintaining the 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 in 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 damage.

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, undertakings 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 assumes 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.

12.6 If for any reason this limit is found to be unlawful or invalid by a Court of appropriate jurisdiction, the Supplier's entire liability as referred to in this clause shall not exceed £1,000,000 (one million pounds) for any one incident or series of incidents during the term of this Agreement.

13. FRAUD

13.1 For the avoidance of any doubt, the Customer responsibilities include but are not limited to;

(i) Secure implementation and management of their systems including any hardware not provided by the Supplier such as Firewalls or PBX.

(ii) Maintaining security and confidentiality of authentication details for online service portals and other services.

(iii) Mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to the Supplier

13.2 The Customer accepts full and complete liability for any costs incurred as a result of fraud.

13.3 The Supplier recommends the Customer obtains professional security advice with regard to the equipment and Services provided.

14.0 FORCE MAJEURE

14.1 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.

14.2 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.

15.0 TERMINATION

15.1 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.

15.2 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.

15.3 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.

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

15.5 The supplier may terminate the Agreement with immediate effect by giving the Customer written notice and then payment is due immediately from the Customer for the entirety of the minimum period or if the minimum period has expired then payment is due up to the anniversary of the following year of cover if.

15.5.1 any maintenance, repair, replacement, alteration or addition be made to the Equipment other than by the supplier or its authorised installer;

15.5.2 the Customer misuses or abuses the Equipment;

15.5.3 the service charge is unpaid for seven days or more.

16.0 NOTES

16.1 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.

16.2 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.

17.0 GENERAL

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

17.2 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.3 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.

17.4 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.

17.5 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.

17.7 The Supplier may at any time change this Agreement without the prior agreement of the Customer. This Agreement in its most current form 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 subcontract 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.

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

Service Tel: 0161 788 4400