

## NUMBERGROUP PBX MAINTENANCE SERVICE TERMS AND CONDITIONS

Your agreement with us (this “Agreement”) is made up of the following documents:

- (i) The Order Form or Voice Recording (as applicable);
- (ii) These Terms and Conditions for PBX Maintenance Services together with the Schedules and Appendices attached;
- (iii) Numbergroup’ Network Service Terms and Conditions;
- (iv) The relevant Tariffs for the Services as referred to in Schedule 3 (where applicable); and
- (v) any further conditions relating to specific services (where applicable).

The documents are listed in order of precedence. In the event of an express conflict between the documents above whichever is higher on the list will take precedence, but in absence of an express conflict the terms and conditions referred to above are supplemental to one another. All Terms and Conditions are available at [www.numbergroup.com/terms](http://www.numbergroup.com/terms)

### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following terms shall have the following meanings:

**Agreed Parameters** means the parameters outside of which Numbergroup is not obliged to provide Services or Equipment, as set out in Schedule 2 Part 1;

**Applicable Law** means the law of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the use, receipt and/or re-sale of the Services and/or Equipment;

**Change** means any change to this Agreement including to any of the Services and/or Equipment under the Change Control Procedure;

**Change Control Note** means the written record of a Change agreed or to be agreed by the parties, such record being in the form set out in Schedule 7 (Change Control Procedure);

**Change Control Procedure** means the procedure set out in Clause 8 (Change Control) and Schedule 7 (Change Control Procedure);

**Charges** means the charges for the Services and any Equipment to be supplied pursuant to this Agreement and as may be updated by Numbergroup from time to time in accordance with the provisions of this Agreement;

**Commencement Date** means the date on which the Services are to commence as set out in the relevant Order Form or Voice Recording;

**Consumables** means peripheral hardware type items that may be required to complete any Services including cable ties, cable ties with labels, cables, labelling tape, ADSL filters, ADSL iPlates, 3A fuses, 13A fuses, kettle leads, console cable, modem leads and USB memory sticks, connectors, adapters and any other item determined by Numbergroup (acting reasonably) from time to time;

**Contractor** means any person who, on or prior to any Commencement Date (and/or prior to the transfer of such services to Numbergroup), supplied services to the Customer which were the same as or similar to those provided, or to be provided, by Numbergroup to the Customer under this Agreement.

**Customer Materials** means any equipment, systems, cabling or facilities provided by the Customer, including Input Material and used directly or indirectly in the supply of the Services and/or Equipment;

**Numbergroup Affiliate** means (i) Numbergroup and any entity which from time to time is Numbergroup's ultimate holding company or a subsidiary of such ultimate holding company or of Numbergroup and (ii) any entity over which from time to time any of the entities defined in (i) either directly or indirectly exercises management control, even though it may own less than fifty per cent (50%) of the shares and is prevented by law from owning a greater shareholding;

**Numbergroup Materials** means any equipment, including tools, systems, cabling, processors, software or facilities, provided by Numbergroup or its subcontractors and used directly or indirectly in the supply of the Services and for which title does not pass to the Customer;

**Numbergroup Personnel** means all employees, agents, consultants, contractors and other representatives of Numbergroup (or any Numbergroup Affiliate or any of their respective subcontractors) who are involved, or proposed to be involved, in the provision of the Services and/or Equipment;

**Data Processor** has the meaning set out in the DPA;

**Data Subject** has the meaning set out in the DPA;

**Document** means any document including any drawing, map, plan, diagram, design, picture or other image, whether in writing, on tape, disk or other device or record embodying information in any form;

**DPA** means the Data Protection Act 1998;

**Effective Date** means the date of this Agreement;

**Employee** means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

**Equipment** means an item of equipment in respect of which Numbergroup is to perform Services in accordance with the terms of this Agreement;

**Excluded Event** means any of the events set out in Schedule 2 Part 2 (Exclusions);

**Incident** means any fault, issue, matter or notice relating to any Customer Equipment;

**Input Material** means all Documents, information and materials provided by the Customer relating to the Services or Equipment, including computer programs, data, reports and specifications;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in any territory in or in relation to patents, rights in inventions, copyright and related rights, moral rights, database rights, rights in designs, semi-conductor topography rights, trade marks, business and domain names, rights in goodwill or to sue for passing off, and other similar or equivalent rights or forms of protection (whether or not registered or registrable) and all applications (and rights to apply) for, and for renewals and extensions of, any such rights as may now or in the future exist anywhere in the world;

**Logistics Services** means the procurement of Spares together with a courier service for those Spares to any End User's Sites;

**MACD Services** means the provision of "moves, additions, changes and deletions", being engineering services within the scope of this Agreement which Numbergroup is requested to carry out by the Customer;

**Maintenance Support Services** means the Services to be provided by Numbergroup which are necessary to attend to and/or resolve Incidents affecting Equipment on the Supported Equipment List;

**Minimum Term** means the initial term from and including the relevant Commencement Date during which Services are to be performed pursuant to, and as stated in the Order Form or Voice Recording;

**Non-Standard Project Services** means Project Services other than Standard Project Services;

**Normal Working Hours** means 09:00 to 17:30 on a Working Day;

**Order Form** means the form detailing the Maintenance Support Services and any other Services as detailed in this Agreement;

**Per Event Services** means any of the following services:

- Logistics Services;
- Routine Maintenance Services; and MACD Services

**Personal Data** has the meaning set out in the DPA;

**Pre-existing Materials** means all Documents, information and materials provided by Numbergroup relating to the Services which existed prior to the Commencement Date of the relevant Order Form, including computer programs, data, reports and specifications;

**Project Services** means Standard Project Services and/or Non-Standard Project Services;

**Request** means a specific request by the Customer to Numbergroup to provide individual Services;

**Routine Maintenance** means scheduled service, inspections and maintenance of any End User Equipment;

**Routine Maintenance Services** means the provision of engineering services as requested by the Customer to carry out the Routine Maintenance;

**Sale of Goods Terms** means the terms set out in Schedule 6 to this Agreement which apply to Spares and Consumables to be supplied or form part of the Services;

**Services** means (as the context requires) the Maintenance Support Services, Per Event Services and/or Project Services to be provided by Numbergroup under this Agreement as set out in Schedule 1;

**Site(s)** means the premises of the Customer where Services are to be performed;

**Spare** means an individual, supplementary or replacement part provided by Numbergroup as part of the Services;

**Standard Project Services** means engineering services which are charged on a per activity basis in accordance with Numbergroup's standard hourly rates;

**Subcontractor** means any subcontractor of a Contractor;

**Supported Equipment List** means the list of Equipment in respect of which Numbergroup may provide Services in accordance with the terms of this Agreement;

**Term** means the term of the Agreement as set out in Clause 2.1; and

**Working Day** means Normal Working Hours Monday to Friday inclusive (excluding bank and other public holidays in England and Wales).

1.2 The interpretation and construction of this Agreement shall be subject to the following rules, except where the context makes it clear that a rule is not intended to apply:

1.2.1 reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced from time to time, and includes any subordinate legislation issued under it;

1.2.2 reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

1.2.3 a singular word includes the plural, and vice versa;

1.2.4 if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;

1.2.5 the headings in this Agreement are for reference purposes only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 a reference in this Agreement to: a Clause is a reference to the clause that bears the relevant number in the body of this Agreement; a Schedule or an Appendix to a Schedule is a reference to the relevant schedule to this Agreement and the appendix to such schedule; and a paragraph is a reference to a paragraph of a Schedule.

## **2 APPOINTMENT**

2.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated in accordance with the terms of this Agreement. At the expiry of the Minimum Term, the term of shall automatically renew for successive periods equal to the Minimum Term, unless and until terminated by either party on at least 90 days' notice, such notice to expire no earlier than either the end of the Minimum Term or any renewed Minimum Term.

2.2 Any supply of Spares or Consumables shall be subject to the Sale of Goods Terms.

2.3 The Minimum Term shall be stated on the face of the Order Form or in the Voice Recording, and if none is stated it shall be deemed to be twelve (12) months.

2.4 The terms and conditions of this Agreement apply to the exclusion of all other terms and conditions which the Customer may purport to apply including any terms or conditions referred to at any website or under any order, purchase order, offer, acknowledgement or similar document.

2.5 The Customer warrants and undertakes to Numbergroup that it is entering into the Agreement for the purposes of its trade, business and/or profession, and not as a consumer.

### **3 SERVICES**

3.1 In consideration of the provision of the Services, the Customer shall pay Numbergroup the Charges in accordance with the provisions of Clause 7 (Charges) and Schedule 3 (Price and Payment).

3.2 The Customer acknowledges that Services may be provided by Numbergroup and/or a Numbergroup Affiliate and/or their contractors.

3.3 Where any time is stipulated for the provision of Services such time shall be an estimate only and shall not be (nor be capable of being deemed) of the essence of this Agreement.

### **4 NUMBERGROUP'S OBLIGATIONS**

4.1 Numbergroup shall use its reasonable endeavours to perform the Services in accordance with the terms of the Agreement.

4.2 Numbergroup shall use reasonable endeavours:

4.2.1 where relevant, inform the Customer about new developments and modifications to the Services; and

4.2.2 to promptly provide, to the Customer, a quotation for providing any Non-Standard Project Services (as defined in Schedule 1).

4.3 In providing each of the Services Numbergroup will:

4.3.1 allocate sufficient resources to provide the Services in accordance with the terms of the Agreement; and

4.3.2 ensure that any of the Numbergroup Personnel who are engaged in the provision of any of the Services shall be appropriately qualified and experienced to undertake their tasks. 4.4 Numbergroup shall co-operate, and use reasonable endeavours to procure that each of its sub-contractors co-operates, with the Customer so as to integrate (where reasonably requested by the Customer) other services, materials or equipment supplied by any third party with the Services.

4.5 The co-operation referred to in Clause 4.4 shall only apply where the need to integrate the Services and/or equipment is set out clearly in the Agreement and the costs of such co-operation shall be charged by Numbergroup in accordance with the Agreement.

### **5 THE CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

5.1.1 co-operate with Numbergroup in all matters relating to the Services;

5.1.2 provide, for Numbergroup, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Numbergroup;

5.1.3 provide, in a timely manner, such Customer Material and other information as Numbergroup may reasonably require, and ensure that it is accurate in all material respects of satisfactory quality, and fit for purpose;

5.1.4 inform Numbergroup of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

5.1.5 take all reasonable steps to protect the health and safety of Numbergroup Personnel whilst Numbergroup Personnel are at the Customer's premises;

5.1.6 ensure that all the Customer Material is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Customer Material (such licences and consents shall in all cases commence on or before the date on which the Services are to start); and

5.1.8 make available to Numbergroup and Numbergroup Personnel such access to staff of the Customer who are familiar with the Customer's systems and Equipment and software as Numbergroup may reasonably require in connection with the supply of the Services.

5.2 The Customer is responsible for data cleaning, and for the integrity of any data, including Customer Material, provided to Numbergroup and for all direct and indirect consequences of any errors in such data or Customer Material.

5.3 Except to the extent Numbergroup has specifically agreed in the Agreement to provide a back-up service, or to transfer, duplicate or reinstall data or information as a part of the Services, the Customer is solely responsible for safeguarding its data by taking backup copies, maintaining a disaster recovery process and through any other means the Customer believes appropriate including maintaining up to date anti-virus software. Save as set out in Clause 5.4 below, Numbergroup shall not be responsible for any loss or corruption of data arising as a result of the provision of the Services.

5.4 If Numbergroup has agreed to provide a back-up service, or to transfer, duplicate or reinstall data or information as a part of the Services, the Customer's sole and exclusive remedy for any loss or corruption of data shall be for Numbergroup to use reasonable endeavours to restore such data or information to the most recent, uncorrupted copy of such information or data which Numbergroup holds.

## **6 SITES**

6.1 To enable Numbergroup to fulfil its obligations under this Agreement:

6.1.1 the Customer shall permit Numbergroup and any other person(s) authorised by Numbergroup to have reasonable access to the Customer's Sites, equipment and shall provide such reasonable assistance as Numbergroup requests;

6.1.2 Numbergroup will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and if requested the Customer shall) permit or procure access to the relevant Sites at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, the Customer shall be liable to Numbergroup for any costs and expenses which Numbergroup incurs as a result of such cancellation, rescheduling and/or missed appointment;

6.1.3 the Customer warrants, represents and undertakes that it has adequate health and safety provisions in place at the Sites; and.

6.1.4 the Customer warrants, represents, and undertakes that it has (and shall maintain throughout the Term) all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work and for the provision of Spares and/or Consumables, use and operation of the Equipment

and/or Services at the Sites (save to the extent Numbergroup has agreed in writing to obtain such consents, licences and permissions).

6.2 In the event that the Customer discovers that it is not in possession of, or is unable to procure, a necessary consent, licence or permission (as described in Clause 6.1.4 above), Numbergroup shall be able to terminate the relevant Services forthwith without liability to the Customer by giving the Customer written notice. If the Customer has not managed to procure the necessary consents and Numbergroup has commenced work, on request by Numbergroup, the Customer shall pay Numbergroup the Charges for all such work (including, without limitation, staff costs and equipment costs) in accordance with Schedule 3 (Price and Payment) (or if not stated at Schedule 3 at its then current rates), and shall reimburse Numbergroup for any and all costs, damages, expenses and liabilities which Numbergroup suffers or incurs as a result of having commenced work without the necessary licence, consent or permission.

6.3 If the Customer fails to provide Numbergroup access or access rights, permission or consent required under this Agreement to deliver the Services, then the Customer shall pay all Charges for such Services from and after the date Numbergroup is otherwise ready to deliver them. In addition, Numbergroup shall not be liable for any failure to provide the Services to the extent that such failure is due to Numbergroup being denied access to the Customer's Site.

6.4 The Customer shall provide Numbergroup with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide Numbergroup with full details of all other services in the vicinity of any proposed works.

6.5 As between Numbergroup and the Customer, the Customer is responsible for making good the Site (at its own cost) after the Services have been performed by Numbergroup at a Site, (including, without limitation, for re-decorating).

6.6 If the Customer is moving or transferring its operations to a new Site, Numbergroup must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the relevant services and/or Equipment to the new site.

6.7 If a new installation or moving Site involves the visit of an engineer to facilitate it, the Customer shall be responsible for the costs incurred by Numbergroup for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by Numbergroup to complete the transfer of the Services and/or Equipment. Such an activity shall be chargeable as a MACD Service.

6.8 If the Customer moves to a new Site and leaves the Equipment for the new owner/tenant, the Customer is required to inform the new owner or tenant that the relevant Service will be discontinued if the Customer is not contacted by the new owner/tenant within seventy two hours for the purpose of entering into a new contract with the Customer for such services and subject in any event to the agreement of such a contract. The Customer shall submit a written request to Numbergroup to request the provision of Services to the Customer at the new site.

6.9 If, at the new site, the Customer receives services which are similar to the Services from an alternative supplier, as between Numbergroup and the Customer, the Customer shall remain liable for meeting the Customer's obligations under any contractual agreement the Customer has with such alternative supplier and for any liabilities the Customer may incur for terminating such agreement. For the avoidance of doubt, the Customer shall remain liable to pay the Charges in respect of the old Site until such time as the new contract is entered into pursuant to Clause 6.8.

## **7 CHARGES**

7.1 The Charges payable by the Customer to Numbergroup in respect of the Services shall be as set out in the Order Form or Voice Recording and Schedule 3, (and if none are set out in Schedule 3 (Price and Payment) or the Order Form or the Voice Recording then charges payable shall be Numbergroup's then current charging rates).

7.2 All Charges are expressed exclusive of Value Added Tax or other applicable or equivalent taxes. The Customer will be responsible for paying Value Added Tax and other applicable or equivalent taxes. Such taxes will be included at the applicable rate at time of invoice in all invoices submitted by Numbergroup.

7.3 Numbergroup shall be entitled to invoice the Customer in accordance with Schedule 3.

7.4 The Customer shall pay, by direct debit, each undisputed invoice (or such undisputed part thereof) within seven (7) days of the date of the invoice (without any set-off or deduction).

7.5 Numbergroup shall have the option, but not the obligation, to send a single consolidated invoice to the Customer for all Services provided.

7.6 All Charges shall be expressed, invoiced and payable in pounds sterling. Invoices shall be in Numbergroup's standard form and shall constitute valid VAT invoices.

7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Numbergroup on the due date, Numbergroup may:

7.7.1 charge interest on such sum from the due date for payment at the annual rate of 4% above LIBOR, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and/or

7.7.2 (if payment remains unpaid four (4) days after the due date) immediately suspend all Services until payment has been made in full (and for the avoidance of doubt, such suspension shall be at no cost or penalty to Numbergroup).

7.8 If the Customer's account remains unpaid (in any part) Numbergroup may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before Numbergroup will reinstate the Services.

7.9 All sums payable to Numbergroup for the provision of Services shall become due immediately on its termination, despite any other provision. This Clause 7.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

7.10 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:

7.10.1 the Customer shall notify Numbergroup in writing within seven (7) days of the date of the invoice;

7.10.2 the Customer's failure to pay the disputed Charges pending an investigation by Numbergroup shall not be deemed to be a breach of this Agreement;

7.10.3 the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice;

7.10.4 to the extent that the Customer is obliged, following investigations by Numbergroup of the dispute, to pay an amount, then Numbergroup may charge interest in accordance with Clause 8.9 from the original due date until the date of payment;

7.10.5 once the dispute has been investigated, where either party is required to make a balancing payment (or Numbergroup is required to issue a credit note), it shall do so within 3 days.

7.11 Numbergroup reserves the right to carry out a credit check against the Customer during the Term of this Agreement, and subsequent to the carrying out of such credit check, may set a credit limit and/or request from the Customer (and if requested the Customer shall provide and/or procure) a cash deposit or bank guarantee in a form and amount to be approved by Numbergroup and issued by a bank acceptable to it, the amount not

exceeding the Charges which Numbergroup might reasonably expect the Customer to incur during the Term of this Agreement. Numbergroup shall be entitled to retain any such deposit or bank guarantee during the Term of this Agreement.

## **8 CHANGE CONTROL**

8.1 Where the Customer or Numbergroup sees a need to make a Change to this Agreement or an Order Form, the Customer may at any time request, and Numbergroup may at any time recommend, such Change only in accordance with the provisions of Schedule 7 (Change Control Procedure).

## **9 INTELLECTUAL PROPERTY RIGHTS**

9.1 As between the Customer, Numbergroup and any Numbergroup Affiliate, the Customer acknowledges that all Intellectual Property Rights and all other rights in the Pre-existing Materials are owned by Numbergroup, the relevant Numbergroup Affiliate or its sub-contractor absolutely. Subject to Clause 9.2, Numbergroup hereby licenses all such rights to the Customer on a non-exclusive, royalty-free, non-transferable basis and to such extent as is necessary to enable the Customer to make reasonable use of the Equipment and the Services. If this Agreement is terminated for whatever reason, this licence will automatically terminate.

9.2 If, in conjunction with the use of the Equipment, the Customer needs or wishes to have the use of any software which is owned by a third party, the Customer shall procure any such software directly from the vendor. To the extent necessary, as reasonably determined by Numbergroup (but without prejudice to paragraph 1.2.3 of Schedule 2 Part 2), the Customer shall ensure that the terms on which such third party's software is licensed permit Numbergroup to use the software as may be necessary to perform the Services.

9.3 If and to the extent that Numbergroup, Numbergroup Affiliates and/or Numbergroup Personnel are required to use any software belonging to the Customer or any third party for the purposes of providing the Services, the Customer hereby grants to Numbergroup (or shall procure the grant to Numbergroup of) a non-exclusive, royalty-free, non-transferable licence to use such software to the extent necessary to enable Numbergroup Personnel to provide the Services in accordance with this Agreement.

9.4 The Customer shall, at all times during and after the Term, hold harmless and indemnify Numbergroup and each relevant Numbergroup Affiliate and keep Numbergroup and each relevant Numbergroup Affiliate indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Numbergroup or the relevant Numbergroup Affiliate arising from any claim made against Numbergroup or a Numbergroup Affiliate for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the use of the Services.

## **10 WARRANTIES**

10.1 The Customer warrants that it has full power and authority to enter into this Agreement and to perform its obligations under this Agreement.

10.2 Numbergroup warrants that:

10.2.1 it has full power and authority to enter into this Agreement and shall obtain all approvals and consents where necessary for the fulfilment of its obligations under this Agreement; and

10.2.2 it shall use reasonable skill and care when providing the Services.

10.3 The warranties given by Numbergroup in this Agreement shall not apply to improper, incorrect, or unauthorised use of the Services by the Customer or a third party authorised by the Customer, and Numbergroup shall have no liability for such use.



10.4 The warranties stated in this Clause 10 are the only warranties made by Numbergroup in relation to the Services. Subject to Schedule 6, all warranties, conditions and other terms implied by statute or common law or course of dealings are, to the fullest extent permitted by law, excluded from this Agreement.

10.5 No employee, agent or representative of Numbergroup has the authority to bind Numbergroup to any oral representation or warranty concerning the Services provided by Numbergroup. Any oral or written representation or warranty not expressly contained in this Agreement shall not be enforceable by either party.

## **11 LIMITATIONS OF LIABILITY**

11.1 Subject to clause 7 of Numbergroup' Network Minimum Terms and Conditions (but except clause 7.5 which is superseded by this clause), each party's total aggregate liability to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in any calendar year in connection with the performance or contemplated performance of its obligations under this Agreement shall be limited to a sum equal to 100% of the Charges payable under this Agreement during the calendar year which the relevant claim arises.

11.2 Any Service Credits payable shall be limited with respect to all failures to meet the Service Levels occurring in any month to 1% of the Charge payable for the Services. For the avoidance of doubt, the monthly charge for Services shall be one twelfth of the annual amount invoiced. Service Credits shall be the sole and exclusive remedy of the Customer for any failure by Numbergroup to achieve the associated Service Levels.

11.3 The parties agree that if any limitation or provision contained or expressly referred to in this Clause 11 and as detailed in the applicable sub-clauses in clause 7 of the Network Services Agreement are held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If either party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this Clause 11.

11.4 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

## **12 DATA PROTECTION AND FREEDOM OF INFORMATION**

12.1 To the extent that Numbergroup is required as part of the Services to process Personal Data as a Data Processor, Numbergroup shall:

12.1.1 process the Personal Data only on behalf of the Customer (or, if so directed by the Customer), only for the purposes of:

12.1.1.1 administering the Customer's account and this Agreement;

12.1.1.2 notifying the Customer of changes to the Services, including (without limitation) contacting the Customer regarding potential and/or actual enhancements to or offers,

12.1.1.3 enabling Numbergroup to supply the Services to the Customer;

12.1.1.4 for invoicing purposes; and

12.1.1.5 notifying the Customer of other services offered by Numbergroup and any Numbergroup Affiliate.

12.1.2 at all times comply with the provisions of the seventh data protection principle set out in schedule 1 of the DPA and implement appropriate technical and organisational measures to seek to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure; and

12.1.3 not publish, disclose or divulge any of the Personal Data to any third party (including the Data Subject himself) unless directed to do so in writing by the Customer, but except where such disclosure is required by law or for regulatory purposes.

12.2 Numbergroup may transfer Personal Data to any sub-contractor (which transfer may be outside the European Economic Area) or to other companies within the Numbergroup group of companies for the purpose of performing its obligations. By executing this Agreement, the Customer hereby consents to Numbergroup transferring Personal Data to any sub-contractor outside the European Economic Area in connection with the provision of the Services.

12.3 Numbergroup shall not be liable (whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise) if a Data Subject makes a claim or complaint with regards to Numbergroup's actions to the extent that such actions directly result from instructions received from the Customer.

12.4 The parties shall comply at all times with the DPA and shall not perform their obligations under this Agreement in such a way as to cause Numbergroup or any of its sub-contractors to breach any of its obligations under the DPA. Each Party shall immediately notify the other party in the event that it becomes aware of any breach of the DPA by either party in connection with this Agreement.

12.5 The Customer warrants, undertakes and represents that it will grant and shall procure that its employees, other personnel and End Users grant consent to the use of Personal Data (referred to above) as may be necessary to enable Numbergroup to use such data for the purposes described in this Clause 14.

### **13 TERMINATION**

13.1 This clause 13 is supplemental to clause 3 of Numbergroup' Network Services Terms and Conditions as detailed above and in the event the clause 13 conflicts it shall take precedence.

13.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach.

13.3 In the event of termination of this Agreement for any reason:

13.3.1 the Customer shall immediately pay to Numbergroup all of Numbergroup's unpaid invoices, and in respect of Services supplied but for which no invoice has been submitted Numbergroup may submit an invoice which shall be payable immediately upon receipt;

13.3.2 Numbergroup shall, if requested by the Customer, provide assistance to the Customer to the extent reasonably necessary for an orderly handover of the Services, the terms of such assistance (which will include the extent to which Numbergroup shall be paid for such assistance) shall be agreed between the parties; and

13.3.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

### **14 RIGHTS OF SUSPENSION**

14.1 Numbergroup may, at its sole discretion and without prejudice to any other right which it might have under or in connection with this Agreement, elect to immediately suspend the provision of one or more Services if Numbergroup:

14.1.1 has reasonable grounds to consider it is entitled to terminate this Agreement;

14.1.2 has an express right in this Agreement to do so;

14.1.3 is required to do so to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;

14.1.4 has reasonable grounds to consider that any of the Services is being used fraudulently or illegally or otherwise in violation of this Agreement (whether by the Customer or any of its users);

14.1.5 has reasonable grounds to consider that the Customer shall not or is unable to make any payment which is due or is to fall due to Numbergroup hereunder or the Customer exceeds any credit limit set pursuant to Clause 7.12; or

14.1.6 has reasonable grounds to consider that the Customer is or has been involved or connected with criminal activity or other activity, which is or may be detrimental to Numbergroup.

14.2 If Numbergroup exercises its right to suspend any of the Services pursuant to Clause 14.1.3 it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration.

14.3 If a Service is suspended as a consequence of the breach, fault, act or omission of the Customer or a user, the Customer shall pay to Numbergroup all reasonable costs and expenses incurred by Numbergroup in the implementation of such suspension and/or recommencement of the provision of the Services. Numbergroup shall have no obligation to perform the Services during the period of suspension.

14.4 Numbergroup shall not be liable for any loss, damage or inconvenience suffered by the as a result of any suspension made pursuant to this Clause 14.

## **15 VARIATION**

15.1 Subject to Clause 8 (Change Control), No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by Numbergroup.

15.2 Numbergroup shall be entitled to change the terms, specifications and/or conditions of this Agreement and/or a Service (including without limitation Schedule 4 (Service Levels and Service Credits) and/or Schedule 3 (Price and Payment) for bona fide operational or commercial reasons (including changes made in consequence of governmental, regulatory or third-party action) by notice to the Customer. Numbergroup shall give the Customer at least thirty (30) days' notice of any such change except where such changes are being made as a consequence of governmental, regulatory or third-party action (in which case Numbergroup shall give as much notice as is practicable in the circumstances).

15.3 Notwithstanding Clause 15.2 and Clause 7.8, after and notwithstanding, Numbergroup shall be entitled to change any of the Charges by giving at least seven (7) days' notice of any change to the Customer.

## **16 CALL MONITORING**

16.1 Numbergroup may monitor and record calls made to or by Numbergroup by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by Numbergroup under this Clause.

## **SCHEDULE 1: SERVICES**

### **1. Definitions**

In this Schedule 1, the following definitions shall have the following meanings:

**Closed** means where an Incident, or Per Event Service has been Fixed or Completed (as appropriate) and all follow up work on the Sites (if such work is not itself the subject of a separate request to perform Services) has been completed, including the removal of all parts that have been replaced and **Close** shall be interpreted accordingly;

**Completed** means:

- (in respect of Logistics Services) the Spares have been delivered, and the old Spares removed;
- (in respect of Routine Maintenance Services) the service, inspection or maintenance of the Customer Equipment or systems has been carried out by Numbergroup;
- (in respect of MACD Services) means the move, addition, change or deletion of the Customer Equipment or systems has been carried out by Numbergroup.

**Numbergroup Engineer** means the Numbergroup representative responsible for carrying out engineering duties on the Sites;

**Estimate Request** means a description of the Project and the requirement of the Customer for Non-Standard Project Services from Numbergroup (such request to be in the format provided to Numbergroup by the Customer).

**Estimate Response** means a response to the Estimate Request in the agreed format including the price associated with the relevant Non-Standard Project Services.

**Fixed** means that the Equipment is installed and operational and Fix shall be interpreted accordingly;

**Incident Request** means a request by the Customer within the Agreed Parameters for Numbergroup to Fix an Incident;

**Project** means the engineering project to be carried out by the Customer;

**Response Time Service Level** - means the time within the Agreed Parameters or Schedule 4 (Service Levels and Service Credits) in which Numbergroup must arrange for an engineer and/or part to be on Site as notified by the Customer in the Incident Request;

**Triage** means a suitably qualified engineer will attempt to resolve an Incident or identify the root cause of an Incident including but not limited to the use of remote access tools and dialogue with the Customer; and **2.**

## **Obligation**

2.1 Each Party undertakes to the other that it shall (and shall use reasonable endeavours to procure that persons acting on its behalf shall) comply with any requirements or obligations set out in this Schedule

## **SCHEDULE 1 – PART 1: MAINTENANCE SUPPORT SERVICES**

### **1. Incident Request**

- 1.1 Where an Incident occurs the process set out in this Schedule 1 Part 1 shall be followed.
- 1.2 The Customer shall at any time after becoming aware of an Incident be entitled to make an Incident Request that Numbergroup provide Maintenance Support Services to Fix the Incident by logging a ticket with Numbergroup by telephone or by email;
- 1.3 Each Incident Request shall include all relevant information required for Numbergroup to assess the Incident including but not limited to a description of the Incident and the Equipment which is relates to.
- 1.4 Numbergroup shall use reasonable endeavours to carry out Maintenance Support Services in response to the Incident Requests for items of Equipment identified on the Supported Equipment List. For all Incident Requests in relation to Equipment not listed on the Supported Equipment List, Numbergroup shall use reasonable endeavours to respond to such Incident Requests and the Customer shall be liable to pay Numbergroup in accordance with Numbergroup' applicable standard hourly rates. Such Incidents shall not benefit from any Service Level and Numbergroup's performance in relation to responding and/or fixing such an Incident shall not be counted in relation to its achievement or otherwise of the Service Levels.

### **2. Maintenance Support Services**

- 2.1 As soon as reasonably possible following the receipt of the Incident Request, Numbergroup shall undertake Triage work to attempt to Fix the Incident.
- 2.2 In the event that Numbergroup acting reasonably concludes that the Incident cannot be fixed remotely, Numbergroup shall arrange for an Engineer to attend at the relevant Site. Numbergroup shall notify the Customer of the estimated time of arrival for the Numbergroup Engineer at the relevant Site.
- 2.3 Providing such items have been made available to Numbergroup, Numbergroup shall ensure that any Numbergroup Engineer responding to an Incident Request shall have the relevant security clearance, card access and gate keys necessary to gain access to the Sites for the purposes of providing the Maintenance Support Services. If the Numbergroup Engineer cannot gain entry to the Sites, paragraph 2.9 below shall apply.
- 2.4 The Customer can cancel any Incident Request at any time by giving notice to Numbergroup. Such an Incident shall be deemed to be Fixed and Closed for the purposes of determining Numbergroup's achievement or otherwise of the Service Levels. Any cancelled Incident Request shall be charged to the Customer in accordance with Numbergroup' standard hourly rates.
- 2.5 Numbergroup shall ensure that on arrival at the Site, the Numbergroup Engineer will notify Numbergroup that they have arrived. The time of arrival recorded by Numbergroup is shall be recorded as the response time for the purposes of calculating whether the Response Time Service Level has been achieved.
- 2.6 Numbergroup shall update the Customer as soon as reasonably possible following any material change to the estimated time of arrival of a Numbergroup Engineer at any Site.
- 2.7 Numbergroup shall ensure that the Numbergroup Engineer uses their reasonable endeavours to Fix any Incident (which shall include the Numbergroup Engineer using their own skill and judgement to Fix an Incident) where the Incident does not match information provided by the Customer, providing always such Incident requires Maintenance Support Services within the Agreed Parameters and that the Incident is not within any of the Exclusions listed in Schedule 2 Part 2.
- 2.8 Where a Numbergroup Engineer arrives at the Sites and is refused access to the Sites by the End User or is otherwise unable to access the Sites, the Numbergroup Engineer shall notify Numbergroup of the situation together with sufficient details to allow the parties to determine the cause and action required. The

Numbergroup Engineer shall remain at the Sites for a further period of fifteen (15) minutes or such time as is agreed with the Customer (whichever is the shorter). Numbergroup shall be entitled to charge for this period of waiting time in accordance with Numbergroup' applicable standard hourly rates. In such circumstances where Numbergroup does not gain access to the Sites and/or Equipment at all, Numbergroup shall be entitled to charge for the time and travel in accordance with Numbergroup' standard hourly rates together with the charges for any spares, logistics and subsistence and the Incident shall be deemed to be Closed and Fixed within any relevant Service Level.

2.9 If the Numbergroup Engineer requires assistance from the Customer, Numbergroup shall contact the Customer and the Customer shall provide such assistance which the Numbergroup Engineer may reasonably require.

### **3 Fixing and Closing Incidents**

3.1 Where a Numbergroup Engineer considers that the Incident is Fixed it shall Numbergroup, who in turn will notify the Customer as soon as reasonably possible. The notice to the Customer shall include the date on, and time at, which the Incident was Fixed.

3.2 Where any follow up action is required (if Numbergroup determines such work should not be the subject of a separate Request) Numbergroup shall complete the follow up action. On completion of the follow up action Numbergroup shall give notice to the Customer.

## **SCHEDULE 1 – PART 2: PER EVENT SERVICES**

### **1 Requests**

1.1 Where any Per Event Services are required this Schedule 1 Part 2 shall apply.

1.2 The Customer shall make a written Request to Numbergroup which shall include the following:

1.2.1 details of any Spares or Consumables required;

1.2.2 details of any items of equipment to be returned to Numbergroup;

1.2.3 details of the relevant user;

1.2.4 details of the Site which is to be visited or to which the spares or parts are to be delivered to (and any return address) (as applicable);

1.2.5 a proposed date(s) for the delivery of the Spares;

1.2.6 any other information which is relevant to the request.

1.3 Numbergroup shall accept or reject each Request in accordance with Clause 2.

## **2 Provision of Services**

2.1 Numbergroup shall use reasonable endeavours to carry out Per Event Services for items of Equipment identified on the Supported Equipment List. As soon as reasonably possible following acceptance of an Order Form by the Customer, Numbergroup shall notify the Customer of:

2.1.1 the estimated time of arrival of the Numbergroup Engineer at the Sites; and

2.1.2 (if applicable) the estimated time of arrival for the Spare at the relevant Site.

2.2 Subject to the following provisions of this paragraph 2.2, the Customer can cancel any Order Form at any time by giving notice in writing to Numbergroup, and such request for Per Event Services shall be deemed to be Completed and Closed:

2.2.1 If (in respect of Logistics Services), the Customer cancels the request for Per Event Services before Numbergroup receives the consignment number or similar from the relevant logistics supplier, the Customer shall be charged for such Logistics Services in accordance with Numbergroup's standard hourly rates together with charges for any Spares or Consumables;

2.2.2 If (in respect of Routine Maintenance Services and/or MACD Services), the Customer cancels its request for Routine Maintenance Services and MACD Services less than forty eight (48) Working Hours before the Routine Maintenance Service or the MACD Services is due to commence, the Customer shall be charged for such services in accordance with Numbergroup's standard hourly rates.

## **3 Completed and Closed Per Event Services**

3.1 Where Numbergroup considers that the relevant Per Event Service is Completed it shall confirm to the Customer that the relevant Per Event Service is Completed.

3.2 Where any follow up work is required, Numbergroup shall complete the follow up action at a date and time agreed with the Customer. Upon completion of the follow up action, Numbergroup shall give notice to the Customer.

3.3 The Per Event Services shall be charged to the Customer in accordance with Schedule 3 (Price and Payment).

### **SCHEDULE 1 - PART 3: PROJECT SERVICES**

#### **1 Standard Project Services**

1.1 Where any Project Services are required, this Schedule 1 Part 3 shall apply.

1.2 Following acceptance by Numbergroup of an Order Form in accordance with Clause 2, Numbergroup shall use its reasonable endeavours to commence work on the start date agreed between the parties, and to perform the Standard Project Services in accordance with the terms of this Agreement.

1.3 The Standard Project Services shall be charged to the Customer in accordance with Schedule 3.

## **2 Non-Standard Project Services**

### **2.1 Requests for Estimates**

2.1.1 On receipt of a Estimate Request, Numbergroup shall provide the Customer with a Estimate Response or reject a Estimate Request within a reasonable period of time.

2.1.2 A Estimate Response submitted by Numbergroup shall be valid and capable of acceptance by the Customer for the period stated in the Estimate Response.

2.1.3 A Estimate Response submitted in accordance with paragraph 2.1.2 above shall include the information agreed between the parties from time to time but shall include (as a minimum) a breakdown of the number of days required to complete the Non-Standard Project Services, and the associated Charges (including requirements for any interim payments) and a summary of the work required

2.1.4 If the Customer has any queries with regard to the Estimate Response, both parties will seek to resolve such queries promptly.

### **2.2 Orders for Non-Standard Project Services**

2.2.1 Once the parties have agreed the Estimate Response, the Numbergroup shall submit an Order Form to the Customer referencing the Estimate Response. If and when the Order Form is signed by an authorised representative of the Customer, the terms of the Order Form shall bind both parties.

## **SCHEDULE 2: AGREED PARAMETERS AND EXCLUSIONS**

### **Part 1 - Agreed Parameters**

#### **1 Introduction**

1.1 This Schedule 2 defines when the Customer must seek consent from Numbergroup with regard to the provision of Services.

1.2 Requirements which are outside of the defined parameters set out below are to be referred to

#### **Numbergroup. 2 Geographical Coverage**

2.1 Numbergroup shall not be obliged to provide Services if the relevant premises are:

2.1.1 outside the United Kingdom; or

2.1.2 within the United Kingdom and in:

(i) the Highlands (area North and West of a line between Inverness and Fort William and West of a line between Dunoon and Fort William) and Islands of Scotland;

(ii) West Cornwall, (area west of Newquay and Truro); or



- (iii) the Isle of Wight, Isle of Man, Orkneys, Shetlands, Outer and Inner Hebrides, Northern Ireland, Channel Islands, Isles of Scilly.

## **Part 2 - Exclusions**

1.1 Notwithstanding any other provision of this Agreement, Numbergroup shall not be obliged to perform or provide any of the services set out below. If Numbergroup does agree to provide such services, Numbergroup's charges for supplying or providing such services shall be calculated in accordance with Numbergroup's applicable standard hourly rates and charges in respect of Spares and Consumables, and shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement:

1.1.1 the maintenance or repair of any power supply (including without limitation, any battery backup and/or uninterruptible power supply) to the Equipment;

1.1.2 the repair or maintenance of any network connected to the Equipment; and/or

1.1.3 repair or maintenance of ancillary items including, but not limited to cabinets and/or any infrastructure cabling.

1.2 The following matters shall not be included or covered in the Charges or the scope of Maintenance Support Services or Standard Project Services. If such services are performed, supplied or provided (and Numbergroup shall be under no obligation in this regard), they shall be subject to charges in accordance with Numbergroup's applicable standard hourly rates and charges in respect of Spares and Consumables and shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement:

1.2.1 the transportation or relocation of the Equipment;

1.2.2 the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the manufacturer regarding the operation of the Equipment);

1.2.3 any development, modification or correction of any software used upon or in association with the Equipment; and/or

1.2.4 the reprogramming of the Equipment to provide improved or modified service or facilities;

1.2.5 any repair, labour or materials required as a result of accidental damage, theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line or other network (public or private) conditions or faults, the connection of unapproved accessories, attachments or other devices;

1.2.6 the alteration, modification, repair or maintenance of the Equipment by any person other than Numbergroup;

1.2.7 the negligence of the Customer or its users or the improper use by the Customer or the user of the Equipment;

1.2.8 a failure to maintain a suitable environment for the Equipment at the Sites;

1.2.9 a disaster affecting the Equipment (including without limitation fire, flood, water, wind, lightning);

1.2.10 network faults caused by equipment other than the Equipment in respect of which the Services are provided and which cannot be fixed without that unsupported equipment being repaired or which could be fixed but would fail again unless the unsupported equipment is repaired;

1.2.11 any Equipment which cannot be fixed due to the failure of any other software or the system (not being Equipment) without such unsupported software or system being repaired, or which could be fixed, but would fail again unless the unsupported software or system is repaired by the relevant third party;

1.2.12 the repair or maintenance of any Equipment which is at the end of its normal, useful working life, for which parts are no longer reasonably, commercially available or which is beyond economical repair; and/or

1.2.13 any call-outs, repair, maintenance or advice in respect of an item of Equipment during the first week after the later of the date upon which:

- (i) Numbergroup agrees to provide Services in respect of such item; or
- (ii) the item of Equipment is added to the Supported Equipment List.

1.3 Numbergroup shall not be obliged to fix or correct, or be liable for, any of the following matters. Such matters shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement and any services, equipment or spares utilised in connection with such matters shall be charged to the Customer in accordance with Numbergroup' applicable standard hourly rates and charges for Spares and Consumables:

- 1.3.1 (save as expressly provided in Schedule 6 (Sale of Goods Terms)) any defect in design, manufacture or installation or performance of equipment (including Equipment), software and/or services to be used under or in connection with this Agreement or an Order (except in relation to defects in installation, where Numbergroup defectively carried out such installation);
- 1.3.2 late or non-delivery of parts or equipment or software by a third party not under the instruction of Numbergroup;
- 1.3.3 any change in the Customer's requirements other than agreed by way of a Change;
- 1.3.4 a Customer restricting or preventing access to Sites and/or any Equipment;
- 1.3.5 the Customer's breach of this Agreement;
- 1.3.6 requirements arising after the termination of this Agreement;
- 1.3.7 any necessary landlord or local authority consent or permission not being in place;

1.3.8 an act or omission by the Customer, a user or other third party (not being a sub-contractor of Numbergroup) which prevents the achievement of a Service Level or other obligation by Numbergroup (or any of Numbergroup's subcontractors);

1.3.9 the Customer or any third party incorrectly diagnosing the cause of any Incident or instructing Numbergroup to provide the incorrect Spare or replacement equipment;

1.3.10 Numbergroup not being provided with the necessary configuration of the Equipment by the Customer;

1.3.11 making the Sites good (for example, plastering and/or redecorating) following the performance of any Services; and/or

1.3.12 power or cooling failure at any of the Sites.

1.4 If and to the extent that a failure or delay by Numbergroup (or any of its sub-contractors) in performing any of its obligations under this Agreement is attributable to any of the matters in paragraph 1.3 above:

1.4.1 the time for performance of Numbergroup's obligations shall be extended by a reasonable period;

1.4.2 the Customer shall reimburse Numbergroup for all costs, expenses and losses incurred as a result of such matter; and

1.4.3 if there is any other material impact on the Services (including the timing of delivery or level of performance of any of the Equipment or Services) as a result of such matter, then the parties shall deal with such impact in accordance with the Change Control procedure in Clause 9.

### **SCHEDULE3: PRICE AND PAYMENT**

#### **1. Maintenance Support Services**

1.1 If Numbergroup provides Maintenance Support Services, Numbergroup shall be entitled to invoice annually in advance in relation to the cover to be provided for each item of Equipment on the Supported Equipment List by submitting an invoice to the Customer on or after the Commencement Date and on each anniversary of such date thereafter.

1.2 The charges for the Maintenance Support Services are based on a maximum number of 3 call-outs per item of Equipment contained on the Supported Equipment List in any, and further assumes that all callouts will be made entirely during Normal Working Hours. If Numbergroup is requested to attend more call-outs than this in any period and/or call-outs which are wholly or partially outside of Normal Working Hours, Numbergroup shall charge the Customer for (and the Customer shall pay for) such additional call-outs in accordance with Numbergroup's standard hourly rates.

1.3 Maintenance Support Services shall only be provided in respect of Equipment on the Supported Equipment List. If the Customer or an End User requires Maintenance Support Services to be provided in respect of equipment other than that on the Supported Equipment List, the Customer may request that additional equipment be included on the Supported Equipment List by following the process set out in Schedule 5, but such new equipment shall be subject to the conditions and exclusions set out in Schedule 2.

## **2. Per Event Services**

2.1 If Numbergroup provides Per Event Services, Numbergroup shall be entitled to charge monthly in arrears for the amounts in respect of Spares provided (in respect of Logistics Services) and the charges in accordance with Numbergroup's applicable standard hourly rates (in respect of Routine Maintenance Services and MACD Services), by submitting an invoice following the end of the month in which Per Event Services were Completed.

## **3 Project Services**

3.1 If Numbergroup provides Standard Project Services, Numbergroup shall be entitled to charge monthly in arrears for the amounts as per Numbergroup's applicable standard hourly rates as such amounts correlate to the Standard Project Services which have been provided.

3.2 Numbergroup shall deliver with each invoice a statement setting out the number of visits relating to Completed Per Event Services in the month to which the invoice relates.

3.3 If Numbergroup provides Non-Standard Project Services, Numbergroup shall be entitled to charge monthly in arrears such amounts as are set out in the relevant Estimate Response.

## **4 General provisions**

4.1 Notwithstanding the foregoing provisions of this Schedule 3, Numbergroup reserves the right to require payment from the Customer in advance for any Spares which are to be supplied as part of any of the Services.

4.2 All Charges, prices and amounts contained in:

4.2.1 any Maintenance Support Services Tariff;

4.2.2 Numbergroup's applicable standard hourly rates; and

4.2.3 each Estimate Response (as applicable) exclude VAT.

4.3 Numbergroup's standard hourly rates vary dependent upon the nature of the work to be undertaken, the seniority of engineer required and the geographical area in which the services will be provided. Numbergroup's standard hourly rates are available upon request.

## SCHEDULE 4: SERVICE LEVELS AND SERVICE CREDITS

### 1 Introduction

1.1 This Schedule sets out the Service Levels that shall apply to Maintenance Support Services and the corresponding Service Credits.

1.2 Where Service Levels are not achieved in any calendar month, the Customer shall be entitled to request Service Credits in accordance with this Schedule. Such right is the Customer's sole and exclusive remedy for Numbergroup's failure to achieve the Service Levels.

### 2 Service Levels

2.1 The Service Levels that shall apply to Maintenance Support Services are as follows:

| Services            |                  |
|---------------------|------------------|
| Service Desk Access | 24 x 7 x 365     |
| Days Covered        | Monday to Friday |
| Hours Covered       | 08:30 – 17:30    |
| Bank Holidays       | Excluded         |
| Engineer on Site    | 4 hours          |

| Priority Level    | Criteria  | Response Times |
|-------------------|---|----------------|
| <b>Priority 1</b> | A substantial part of the customer equipment at a site is not working or at severe risk of not working;<br><br>The Incident involves actual or severe risk of data corruption or data loss;<br><br>The customer's business is severely affected; or<br><br>There is a safety issue with the customer equipment. | 1 Hour         |
| <b>Priority 2</b> | A substantial part of the customer equipment at a site is interrupted or compromised; or<br><br>There is a significant impact on the customer's business.   | 6 Hours        |

|                                  |          |  |                |
|----------------------------------|----------|--|----------------|
| <b>Priority (Business Hours)</b> | <b>3</b> | There is a problem with the Customer Equipment that is critical in nature; or                    | 8 Hours        |
|                                  |          | Involves partial loss of functionality with minimal impact to the customer's business.           |                |
| <b>Priority 6</b>                |          | Customer query or technical question in relation to the technology supported under the contract. | 5 working days |

2.2 The Response Time is the duration within which Numbergroup will respond to an appropriate ticket. All tickets will be assigned a unique ticket number and can be logged by telephone or by email. All Priority 1 tickets must be logged with Numbergroup by telephone. The duration commences upon assignment of the ticket number by Numbergroup. A ticket which is reported outside the days and hours covered will have the response duration measured from the start of the next period of coverage. Response Time measurement does not include days and hours not covered by the agreement; this means the duration will stop at the end of the covered hours and recommence the next period.

2.3 Where Numbergroup fails to achieve the Service Level above in relation to the Maintenance Support Services (after the deduction of any time attributable to valid mitigation as set out in paragraph 3 of this Schedule 5) in less than ninety per cent (90%) of all Incidents in the relevant month, the Customer shall be entitled to request a Service Credit of 1% of the monthly Charge for the Maintenance Support Services. For the avoidance of doubt, the monthly Charge is calculated as being one twelfth of the amount which is payable by the Customer on an annual basis pursuant to Schedule 3 (Price and Payment).

2.4 If the Customer requests Service Credits within three (3) months of the month in which the Service Level was not achieved, Numbergroup will pay the Service Credits to the Customer.

### **3 Excusing Causes**

3.1 If Numbergroup has failed to achieve a Service Level, or other obligation within this Agreement, then to the extent such failure is as a result of any of the matters, circumstances or issues listed in Part 2 of Schedule 2 (Agreed Parameters and Exclusions), the Customer shall not be entitled to the corresponding Service Credits or any other remedy.

### **SCHEDULE 5 – SUPPORTED EQUIPMENT LIST**

1.1 If the Customer wishes to amend the Supported Equipment List, it shall submit a request to Numbergroup, indicating the changes to the Supported Equipment List it wishes to make.

Without prejudice to the Term or the Minimum Term, in respect of each item of Equipment listed in the Supported Equipment List, the Customer shall be obliged to procure a minimum of 12 months of Maintenance Support Services from Numbergroup. Such 12 month minimum term will commence from the date on which the Customer signs the relevant Order Form or Change Control Note provided by Numbergroup and upon

confirmation by Numbergroup that the item of Equipment had been accepted onto the Supported Equipment List. If the Customer wishes to remove such an item of Equipment from the Supported Equipment List (for any reason) during such 12 month minimum term such that the Customer will no longer be entitled to receive Maintenance Support Services in respect of that item, the Customer shall continue to be liable to pay the Charges for that item of Equipment for the remaining period of the Minimum Term.

## **SCHEDULE 6: SALE OF GOODS TERMS**

The terms and conditions of this Schedule 6 shall apply to all Spares and Consumables provided to the Customer under or in connection with this Agreement.

### **1. DEFINITIONS**

1.1. In this Schedule unless the context shall otherwise require the following words and expressions shall have the following meanings:

1.1.1. **Actual Delivery Date** means the actual date of delivery of the Spares, Consumables and documentation to the Place of Use;

1.1.2. **Delivery Date** means the date agreed between the parties when the Spares and/or Consumables are to be delivered to the Site; and

1.1.3. **Purchase Price** means the price and other charges payable for the supply of the Spares and/or Consumables contained in the Agreement.

### **2. WARRANTY IN RESPECT OF SPARES**

2.1. Unless the Spare is to be included within an item of Equipment which is on the Supported Equipment List and is subject to the provision of Maintenance Support Services, Numbergroup will use reasonable endeavours to assign, to the Customer, the benefit of the manufacturer's warranty in respect of such Spare. If Numbergroup is able to make such an assignment, in the event of any failure of, or defect in, the Spare, the Customer, and not Numbergroup, shall have the obligation to contact the manufacturer to arrange a repair, replacement or refund (as determined by the terms of the warranty).

2.2. If: 2.2.1. Numbergroup has not assigned the benefit of the manufacturer's warranty to the Customer; and

2.2.2. the item of Equipment into which the Spare has been incorporated is not subject to Maintenance Support Services in accordance with paragraph 2.1; and

2.2.3. the Customer becomes aware of a defect or fault in the relevant Spare within twelve (12) months of receipt by Numbergroup of the Spare (or such other period of warranty as the manufacturer offers in respect of the Equipment as advised by Numbergroup to the Customer)

the Customer shall give notice to Numbergroup of such defect or fault, and Numbergroup shall use reasonable endeavours to procure that the manufacturer will repair or replace the Spare or provide a refund (as determined by the manufacturer in accordance with the terms of the warranty).

2.3. Subject to paragraph 2.2, Clause 12, and subject to the conditions and warranties implied into this Agreement by section 12 of the Sale of Goods Act 1979 all warranties, terms, conditions and undertakings however implied into this contract (whether by statute, course of dealings or otherwise) are hereby excluded to the fullest extent permitted by law.



### **3. DELIVERY AND INSPECTION**

3.1 Numbergroup shall use its reasonable endeavours to deliver the Spare to the relevant Site on the Delivery Date or as soon as possible thereafter.

3.2 At delivery the Customer shall make available to Numbergroup free of charge such labour and equipment as Numbergroup reasonably requires to perform its duties hereunder.

3.3 Unless paragraph 3.4 applies, Numbergroup is obliged to install the Spare as part of the Services, the Customer shall, within seven (5) days of the Actual Delivery Date, inspect and/or test (as applicable) the Spare and give notice to Numbergroup of any damage or non-conformity. In the absence of such notice, the Spare shall be deemed to comply with this Agreement and the Customer shall be deemed to have accepted it. If the Customer provides notification of any damage or non-conformity, the Customer's sole remedy and Numbergroup's sole liability in respect of the same shall be to repair or replace such Spare within a reasonable period of time.

3.4 If Numbergroup is obliged to install the Spare as part of the Services, the Customer shall be deemed to have accepted the Equipment upon the date that Numbergroup informs it that the Spare has been installed or upon first use (whichever is earlier).

### **4 PREPARATION OF PLACE OF USE**

4.1 The Customer shall complete the preparation of the Site to the level that has been identified and agreed between the parties on or before the Delivery Date. Preparation of the Site shall include but shall not be limited to the making of structural alterations to the Customer's premises and the supply of power and other services necessary to permit delivery of the Spare to the Site and its installation and/or configuration of the Equipment.

4.2 Numbergroup shall be entitled to charge for any additional costs that it incurs as a result of the Customer's failure to prepare the Site in accordance with paragraph 4.1 above.

### **5 TITLE, RISK AND PROPERTY**

5.1 Title to the Spares and Consumables shall only pass to the Customer when Numbergroup receives payment for the same in full in cleared funds, in accordance with the terms of the Agreement.

5.2 Risk in the Spares and Consumables (and any associated documentation) shall pass to the Customer upon the Actual Delivery Date.

5.3 Until ownership of the Spares and Consumables has passed to the Customer, subject to the rights given to the Customer in paragraph 5.4 below, the Customer must:

5.3.1 hold the Spares and Consumables on a fiduciary basis as Numbergroup's bailee;

5.3.2 store the Spares and Consumables (at no cost to Numbergroup) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Numbergroup's property;

5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Spares and/or Consumables; and

5.3.4 maintain the Spares and Consumables in satisfactory condition insured on Numbergroup's behalf for their full price against all risks to the reasonable satisfaction of Numbergroup. On request, the Customer shall produce the policy of insurance to Numbergroup.

5.4 The Customer's right to possession of the Spares and Consumables (prior to ownership transferring to the Customer) shall terminate immediately if it ceases trading, is unable to pay its debts or undergoes an event of insolvency or the Agreement is terminated for any reason.

5.5 The Customer grants Numbergroup, its agents and employees an irrevocable licence at any reasonable time to enter any premises where the Spares and Consumables are or may be stored in order to inspect, or, where the Customer's right to possession has terminated, to recover such Spares and Consumables which are still owned by Numbergroup.

5.6 If Numbergroup replaces a part as part of the Services, title to the part so replaced shall vest in Numbergroup or its subcontractor.

## **6 EXPORT**

6.1 The Customer undertakes not to export the whole or any part of the Equipment from the United Kingdom without obtaining all necessary prior consents and licences, including (but not limited to) any licences or consents from the Department of Trade and Industry or any successor of or substitute for such body.

## **SCHEDULE 7: CHANGE CONTROL PROCEDURES**

### **1. PRINCIPLE**

1.1 Where either party sees a need for a variation to the Agreement or an Order Form, a Change Control Note will be completed by the requester and issued to the other party.

1.2 The obligations of the parties shall not be affected until a change control note in the form attached to this Schedule (a **Change Control Note**) has been signed by a duly authorised officer of each party.

### **2 PROCEDURE**

2.1 The parties shall promptly meet to discuss changes proposed by either party to the Agreement such discussion shall result in:

2.1.1 agreement not to proceed further; or

2.1.2 a written request for a change by either party.

2.2 Where a written request for a change is agreed, the party which has requested the change shall submit two signed copies of a Change Control Note to the other party within five working days of such a request.

2.3 Each Change Control Note shall contain details of the change including, where applicable:

2.3.1 the title of the change;

2.3.2 the originator and the date of the request or recommendation for the change;

2.3.3 the reason for the change;

2.3.4 full details of the change including any specifications;

2.3.5 the price, if any, of the change;

2.3.6 a timetable for implementation with any proposals for acceptance of the change;

2.3.7 a schedule of payments, if applicable;

2.3.8 the impact, if any, of the change on other aspects of the Agreement and/or Order Form;

2.3.9 the date of expiry of validity of the Change Control Note;

2.3.10 provision for signature by both parties.

2.4 Each Change Control Note submitted by one party to the other shall have a sequential number, and as appropriate the receiving party may;

2.4.1 request further information from the submitting party in which case Numbergroup shall provide such information as soon as reasonably practicable and in any event within five (5) Working Days, the request for information and the information once provided shall be deemed to be part of the Change Control Note, and the receiving party may approve or reject the Change Control Note upon receipt of new information; or

2.4.2 arrange for two copies of the Change Control Note to be signed by or on behalf of the receiving party and return one of the copies to the submitting party.

2.5 A Change Control Note signed by both parties shall constitute a variation of the Agreement and/or Order Form in accordance with the Agreement.

### **CHANGE CONTROL NOTE**

In the event that the parties agree to amend any of the provisions of the Agreement or Order Form, they will both complete and sign the attached Change Control Note, which will then form part of the Agreement and/or Order Form:

Date of Change Control Note: \_\_\_\_\_

It is agreed that with effect from the date of this Change Control Note, the Agreement /Order Form entered into between Numbergroup Network Limited (**Numbergroup**) and [insert Customer name] (the **Customer**) dated [ 20 ] shall be amended and varied as follows:-

|  |           |      |
|--|-----------|------|
| Details of Change  |           |      |
| Reasons for Change   |           |      |
| Impact of change (if any)  |           |      |
| Term (if applicable)   |           |      |
| Price £ (if applicable)  |           |      |
| Payment terms (if applicable)  |           |      |
| Originator (i.e. Numbergroup or the Customer. Include full name and contact details) |           |      |
| <b>Signed by:</b>  |           |      |
| Payment terms (if applicable)  |           |      |
| The Customer   | Signature | Date |
| Numbergroup  | Signature | Date |

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