

Terms and Conditions for the Sale and Supply of Equipment

1. Definitions

1.1 The following terms as used herein shall have the meaning as stated:

“Cancellation Fee”: the fee payable by you in accordance with the provisions of condition 5.

“Charges”: the Purchase Price and/or the Rental Charge.

“Conditions”: the terms and conditions set out below and any special terms and conditions agreed in writing by us.

“Acceptance”: the acceptance of your order by us, or (where your order is for Rental Equipment) by the Finance Company.

“Contract”: the contract made between us and you or (where your order is for Rental Equipment, between the Finance Company and you), subject to these Conditions and (where your order is for Rental Equipment), any terms imposed by the Finance Company.

“Customer Equipment”: any equipment, including any communications apparatus or system or software, which is owned or controlled by you.

“Customer System”: any communications and/or other equipment operated by you and used in connection with the Service Equipment, whether supplied by us or a third party.

“Finance Company”: any third party providing credit in connection with the rental of the Service Equipment or any part of it.

“Installation Works”: the installation works necessary to install the Service Equipment at the Site in accordance with these Conditions.

“IPR”: any and all intellectual property rights whether existing now or in the future, including but not limited to all patent rights, trademarks, copyright, design rights, database rights, rights in inventions, semiconductor topography rights, know-how, or any similar right exercisable in any part of the world (whether registered or unregistered) and including any applications for the registration of any patents or designs.

“Purchase Price”: the purchase price of the Sale Equipment specified overleaf.

“Maintenance Agreement”: any agreement entered into between us and you for the maintenance of the Service Equipment.

“Rental Charge”: the price for the rental of the Rental Equipment, which shall be payable for the duration of the Rental Period.

“Rental Credit Agreement”: any credit agreement entered into between you and a Finance Company in connection with the rental of the Service Equipment or any part of it.

“Rental Equipment”: the equipment identified overleaf or otherwise notified to you in writing that will be rented to you and which you will return to the Finance Company or to such location within the United Kingdom as is requested by either the Finance Company or us at your own cost after expiry or termination of the Contract, subject to the provisions of these Conditions and any terms imposed by the Finance Company.

“Rental Period”: the period beginning upon Acceptance by the Finance Company and expiring on the Return Date.

“Return Date”: the date stipulated as the date for the return of the Rental Equipment to the Finance Company or us, as requested or such other date as may hereafter be agreed.

“Sale Equipment”: the equipment identified overleaf or otherwise notified to you in writing that we will sell to you, subject to the provisions of these Conditions.

“Service Equipment”: any Rental Equipment and/or Sale Equipment.

“Site”: the site specified overleaf at which the Service Equipment is to be installed or delivered (as the case may be).

“System Details Form”: the form entitled “System Engineering and Installation Details” completed by you containing information about the specification of the Service Equipment together with details of the agreed installation and configuration of the Service Equipment.

“Third Party Agreement”: an agreement between us and a Finance Company for the sale of Service Equipment which became the subject of a Rental Credit Agreement.

“Warranty Period”: 12 months from the date of delivery of the Service Equipment or (where applicable) from completion of the Installation Works.

“we, us or our”: ICloud Telecom Ltd of 61 Collingwood Road, Southsea, Hampshire, PO5 2QZ.

“you or your”: any person firm or company renting or buying Service Equipment from us.

1.2 any reference in these Conditions 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.

1.3 the headings in these Conditions are for convenience only and will not affect their interpretation.

2 The Contract

2.1 These Conditions shall govern the Contract to the exclusion of any other terms and conditions or contractual document.

2.2 When you receive the Acceptance, a legally binding Contract incorporating these Conditions and (where your order is for Rental Equipment, any terms imposed by the Finance Company), shall arise

2.3 Neither we nor you shall be entitled to alter these Conditions without the written agreement of the other.

2.4 Our employees or authorised agents are not permitted to make any representations concerning the Service Equipment or the Installation Works unless confirmed by us to you in writing. For the avoidance of doubt the System Details Form forms part of the Contract and we will rely on the information provided by you in that document. In the event of any inconsistency between these Conditions and the information set out in the System Details Form, these Conditions shall prevail.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, pricelist, >acceptance of offer, invoice or other document or information issued by us will be subject to correction provided that the correction does not materially affect the Contract.

2.6 All orders for Service Equipment shall constitute an offer by you to purchase or rent the Service Equipment pursuant to these Conditions.

2.7 All specifications, dimensions, descriptions and illustrations contained in any sales literature, quotation, or pricelist or other advertising material are intended merely to present a general idea of the Service Equipment. We reserve the right from time to time to make changes to these provided that these changes will not materially affect the nature or quality of the Service Equipment.

3 The Charges and Payment

3.1 If you intend purchasing the Service Equipment the price of the Service Equipment shall be the Purchase Price.

3.2 If you intend renting the Service Equipment the rental payment plan (including the Rental Charge) will depend on: -

3.2.1 the full market value of the Service Equipment;

3.2.2 the proposed Rental Period; and

3.2.3 the amount of any deposit you pay.

3.3 Our salesman will quote you a price for the Service Equipment and/or a rental payment plan and (where relevant) the Installation Works when visiting you pursuant to the provisions of condition 6.1.1.

3.4 You may (at your discretion) apply for credit from a Finance Company in connection with the rental of the Service Equipment. For the avoidance of doubt neither the Contract nor any Maintenance Agreement are conditional in any way on the completion of any Rental Credit Agreement.

3.5 We will at your request enter into a Third Party Agreement. For the avoidance of doubt your payment obligations pursuant to these Conditions shall be extinguished only when we receive payment in full for the Service Equipment pursuant to any Third Party Agreement.

3.6 Your right to rent the Service Equipment is conditional upon: -

3.6.1 you are entering a binding Rental Credit Agreement; and

3.6.2 us receiving payment in full for the Service Equipment pursuant to a Third Party Agreement.

3.7 Provided That if conditions 3.6.1 and 3.6.2 are not satisfied you acknowledge and accept that you are required to purchase the Service Equipment (or any part of it for which credit cannot be obtained) pursuant to these Conditions and must pay to us a sum equivalent to the full market value of the Service Equipment (or a reasonable proportion of it to be determined by us where you can only obtain credit for part only of the Service Equipment) unless we agree to terminate the Contract in accordance with condition 5.

3.8 For the avoidance of doubt in the event of inconsistency between these Conditions and any terms and conditions imposed by a Finance Company (in relation to Rental Equipment) the Finance Company's terms and conditions shall prevail.

3.9 If you intend purchasing the Service Equipment or if your application to enter into a Rental Credit Agreement is rejected for any reason and we do not agree to terminate the Contract you must pay a deposit equivalent to 50 per cent of the price of the Service Equipment.

3.10 Payment is permitted by any one of the following methods: -

3.10.1 Cash;

3.10.2 certified Building Society cheque;

3.10.3 banker's draft; or

3.10.4 BACS or CHAPS.

3.11 If for any reason you fail to make payment as required by these Conditions, we reserve the right to delay delivery and installation until payment has been made. You are not entitled to withhold payment of the whole or any part of the Charges by reason of any alleged defect in the Service Equipment or the Installation Works or by failure to carry out the Installation Works by reason of the circumstances set out in condition 8.6.

3.12 Timely payment of the Charges is of the essence of the Contract.

3.13 You must pay the Charges in the amount and on the date agreed between us (without deduction or set off).

3.14 Unless otherwise stated, all Charges are exclusive of value added tax which, where applicable, will be added to invoices at the prevailing rate.

3.15 We may charge interest on any overdue amount payable from the due date until the date we receive payment (whether before or after judgment) at the rate of 4 percent per annum above the base lending rate of Barclays Bank Plc from time to time.

3.16 We reserve the right to claim statutory interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

3.17 If you do not pay any amount due by the due date for payment, we may instruct a debt collection agency to collect payment (including any interest charges) on our behalf.

3.18 We may at any time:

3.19 carry out a credit check on you and you agree to provide us with any and all information reasonably required for this purpose;

3.20 reduce your credit limit;

3.21 require you to pay a deposit, make payments on account or provide some other form of guarantee as security for future charges; and/or

3.22 register information about you and your account with credit reference agencies.

3.23 We reserve the right at any time to set off any sums owing from you to us against any sums owing from us to you.

4 Credit Applications

4.1 If you ask us to obtain credit on your behalf you give us an unconditional authority to submit an application on your behalf to such Finance Company(s) as we think fit.

4.2 Any application submitted pursuant to condition 4.1 shall constitute an unconditional offer by you to take credit and shall be capable of acceptance by the Finance Company.

4.3 The authority given to us in condition 4.1 can only be withdrawn in writing and you are legally bound to any Rental Credit Agreement entered into prior to written notice of withdrawal being received by us

5 Termination

5.1 Subject to Condition 5.5 below, the Contract can only be terminated by you with our consent which we can withhold in our absolute discretion. Cancellation of any Finance Agreement does not affect your liability under the Contract.

5.2 We may agree to the termination of the Contract on condition that you pay us a Cancellation Fee. For the avoidance of doubt receipt by us of the Cancellation Fee in cleared funds is a precondition to your liability under the Contract coming to an end.

5.3 The Cancellation Fee does not constitute a penalty, but instead is a reasonable pre-estimate of loss likely to be incurred by us having regard to: -

5.3.1 the cancellation of any installation date previously agreed with you;

5.3.2 administration costs incurred by us prior to or in connection with termination; and

5.3.3 any profit we lose by reason of termination.

5.4 We shall be entitled to deduct the whole or any part of the Cancellation Fee from any deposit we have received from you.

5.5 Where we encounter unforeseen problems during the Installation Works as set out in condition 9, you are entitled to terminate the Contract provided that we reserve the right to retain all or part of any deposit or other moneys paid for the Service Equipment (and to demand and receive immediate payment of all or part of any deposit or other moneys which are payable for the Service Equipment). We also reserve the right to demand and receive immediate payment of all or any costs, charges and expenses incurred by us up to and including the date of termination of the Contract by you.

5.6 If you fail to enable access to the Site on more than one occasion (or if we reasonably conclude that we will be unable to access the Site) we will be entitled to terminate the Contract on written notice from us to you. On receipt of this notice you must pay the balance of the price for the Service Equipment which you can collect from us at any time on reasonable notice.

5.7 We may terminate the Contract by giving you:

5.7.1 30 days' notice; or

5.7.2 immediately if:

5.7.2.1 you do not make any payment to us when it is due;

5.7.2.2 you do not perform or observe any material obligation under the Contract, whether such obligation is specified in the Contract as material or not (a "material breach");

5.7.2.3 you do not perform or observe any other obligations under the Contract (a "breach") and where such breach can be remedied, you fail to remedy the breach within any reasonable time specified by us in a written notice requiring you to do so;

5.7.2.4 a voluntary arrangement is proposed, or a bankruptcy petition is presented or a bankruptcy order is made against you or a receiver or trustee is appointed on your estate or, being a company, you become subject to an administration order (within the meaning of the Insolvency Act 1986) or, being a company, you go into liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under the Contract); or

5.7.2.5 we have reason to believe that you have provided us with false, inaccurate or misleading information for the purpose of procuring the supply and/or installation of Service Equipment from us.

6 Access to the Site

6.1 To enable us to complete the supply and/or installation of the Service Equipment you must facilitate our access to the Site on at least two occasions: -

6.1.1 firstly, when our salesman visits you and takes your order for the Service Equipment; and

6.1.2 secondly, for the purposes of installing the Service Equipment.

6.2 Without prejudice to any of the provisions of condition 6.1, we reserve the right to return to the Site as often as is necessary to enable us to complete the Installation Works and you must facilitate our access to the Site on each such occasion.

6.3 We will give you a general indication of the time we will visit though you appreciate that this is to an extent dictated by the length of other appointments which may overrun. If you have given us a contact number, we will attempt to contact you to inform you either that we will be late for our appointment or will be unable to keep our appointment. Under no circumstances will we be liable to you for any losses you suffer by reason of any delay to or cancellation of any appointment.

6.4 Where a third party's permission is required in order to facilitate access to the Site, you must obtain such permission.

6.5 You must provide a suitable and safe working environment for us and our sub-contractors. We and our sub-contractors will comply with your reasonable requirements as to safety on the Site to the extent that such requirements are communicated to us prior to any visit.

7 Consents and Approvals

7.1 It is your responsibility to ensure that all necessary consents and approvals are obtained in respect of the Service Equipment and/or the Installation Works including those of any landlord or local or other authority.

7.2 Under no circumstances will we be liable to you for any loss you suffer by reason of your failure to obtain the necessary consents and approvals.

8 Delivery and installation of the Service Equipment

8.1 Subject to conditions 8.6 and 8.7 we will deliver and install the Service Equipment at the Site.

8.2 If the Service Equipment is not in conformity with the Contract by reason of any shortage, defect, damage or failure to comply with description (if any), then this shall be made good by us, at our sole option, either by replacing the Service Equipment or, by refunding the Charges.

8.3 Any dates we give you for delivery and installation of the Service Equipment are approximate only. We will do all that we reasonably can to meet any date we give you. In the event we are unable to do so we will contact you to agree an alternative date. The Service Equipment may be delivered and fitted by us in advance of any estimated delivery date upon reasonable notice.

8.4 We cannot be held responsible for any inconvenience or loss you suffer as a result of our failure to deliver and install the Service Equipment on any estimated delivery date.

8.5 We reserve the right to charge a reasonable fee for any installation date that you cancel once a date has been agreed. You must pay this to us before we will make any further attempt to deliver and install the Service Equipment.

8.6 It is your responsibility to ensure your own availability once an installation date has been agreed. It is also your responsibility to ensure there is adequate access to the Site. If either you or someone on your behalf is not available or if as a result of inadequate access for any reason we are unable to deliver and install the Service Equipment, then at our absolute discretion we may on reasonable notice arrange a further attempt to deliver and install the Service Equipment.

8.7 If upon the second installation date we are still unable to gain access to the Site to install the Service Equipment or if we reasonably conclude at any time, we will be unable to do so without prejudice to all other rights available to us we may rely on the rights given to us under condition 5.6.

8.8 The Service Equipment will be at your risk upon delivery of the Service Equipment to the Site.

8.9 If it is necessary to install Service Equipment to fulfil our obligations to you under these Conditions you must, at your own expense and in accordance with any instructions given to you by us, in advance of installation:

8.9.1 provide a suitable environment including all necessary floor space, trunking, conduits, cable ducts, utility supply and the provision of sufficient electrical connection points in close proximity to the Service Equipment;

8.9.2 ensure that all devices, equipment or plant necessary to connect the Service Equipment to the Customer System are provided and after installation operate and maintain such devices, equipment or plant; and

8.9.3 carry out all necessary preparatory work.

8.10 All Customer Equipment and/or the Customer System must be:

8.10.1 technically compatible with and must not interfere with the Service Equipment;

8.10.2 in proper working order;

8.10.3 compliant with all applicable standards and approvals for network connection; and

8.10.4 used in compliance with and approved under all relevant instructions, safety and security procedures, standards or laws.

9 Unforeseen problems during Installation Works

9.1 Whilst undertaking the Installation Works it is possible that problems could arise which could not reasonably have been identified during the course of our survey of the Site which may mean that: -

9.1.1 the Installation Works can only be completed at an additional cost; or

9.1.2 we may not be able to install the Service Equipment at all.

9.2 Should the circumstances envisaged in condition 9.1 arise we will confirm the cost of any additional Installation Works. The risk of those Installation Works being required is yours. You can either agree to pay the price of the additional Installation Works or terminate the contract in accordance with condition 5.5. If you decide to terminate, we will not be required to reinstate the Site to its original condition, and you will be subject to liability pursuant to the provisions of condition 5. Where we are unable to install the Service Equipment (pursuant to the provisions of condition 9.1.2), your only remedy is to terminate the Contract, subject to the provisions of condition 5.

10 Remediation Works

10.1 We will make good any damage caused by us during the course of installing the Service Equipment.

10.2 We do not know the value of the contents at the Site. You do know or should know. If there are any items of value which might reasonably be damaged during delivery or installation of the Service Equipment which you can move, we ask that you move them. If any such items cannot be moved, please draw them to our attention when we deliver and install the Service Equipment.

10.3 If we damage your equipment during delivery or installation of the Service Equipment we will pay for the reasonable costs of repair or replacement (less wear and tear) of the item if we have been negligent. We will not be liable for damage as a result of moving equipment under your express instructions, against our advice and where moving the equipment in such a manner is likely to cause damage.

11 Ownership of the Equipment

11.1 Subject to condition 11.2 ownership of the Sale Equipment will not pass to you until we have received in cash or cleared funds payment in full of the Purchase Price together with any other charges you are required to pay.

11.2 Where you have chosen to enter into a Third-Party Agreement, title to the Sale Equipment will pass to the third party with whom the agreement is made upon receipt by us of payment in full in cleared funds of the Purchase Price of the Sale Equipment and Installation Works from that third party.

11.3 Where the Contract has been terminated for any reason, unless you have paid for the Sale Equipment in full, the Sale Equipment will become our property (where ownership has already been transferred to you) though you must take reasonable care of the Sale Equipment until it has been returned to us or we have collected it from you. You also promise to give us a right of access to the Site to enable us to collect the Sale Equipment. If we cannot access the

Site and/or collect the Sale Equipment for any reason you must indemnify us in respect of all our losses arising as a result.

11.4 All Rental Equipment supplied to you will remain the Finance Company's property at all times. You must not add to, modify or in any way interfere with the Rental Equipment, nor allow anyone else to do so. You will be liable for any loss or damage to the Rental Equipment howsoever incurred, other than normal wear and tear.

11.5 You hereby agree that with respect to the Rental Equipment, you shall:

11.5.1 take reasonable care of the Rental Equipment and use it only for its intended purpose; and

11.5.2 comply with all directions provided as to the use and storage of the Rental Equipment and you shall be liable for any damage or deterioration (fair wear and tear excepted) resulting from any failure so to comply; and

11.5.3 insure the Rental Equipment on such terms as may be required; and

11.5.4 pay all licence duties, fees or other charges payable in respect of the Rental Equipment during the Rental Period; and permit the Rental Equipment to be inspected, upon reasonable notice; and

11.5.5 notify us and the Finance Company immediately, following any loss of, damage or deterioration to, and/or breakdown of, the Rental Equipment; and

11.5.6 be responsible for and shall fully reimburse us and the Finance Company for any and all expenses, costs, losses (including loss of Rental Charge) and/or damage incurred by or against us and/or the Finance Company arising from any loss of, damage or deterioration to, and/or breakdown of the Rental Equipment attributable to any act or omission by you; and

11.5.7 indemnify and keep us and the Finance Company indemnified against any and all losses, lost profits, damages, claims, costs, actions and any other losses and/or liabilities suffered by us and/or the Finance Company and arising from or due to any breach of contract, tortious act and/or omission and/or any breach of statutory duty by you.

11.6 You hereby agree that with respect to any Rental Equipment, you shall not:

11.6.1 attempt to repair or maintain the Rental Equipment without prior written consent; or

11.6.2 attempt to sell, hire, assign, charge, pledge, or otherwise lend or dispose of the Rental Equipment or any interest therein; or

11.6.3 remove the Rental Equipment from the Site without permission; or

11.6.4 without limitation, do or omit to do anything which you have been notified may invalidate any policy of insurance related to the Rental Equipment.

11.7 Without limiting any of the provisions of this clause 11, you will incur additional costs and charges for any Rental Equipment which is lost or damaged beyond economic repair, up to and including the replacement cost of new Rental Equipment at current market rates.

12 Bringing a Claim

12.1 You must notify us within 5 working days of delivery or (where applicable) upon connection to the PSTN or VOIP network of the Installation Works of any alleged defect, shortage in quantity, damage or failure to comply with any description. You must allow us an opportunity to inspect the Service Equipment and the Installation Works within a reasonable time after you notify us of your claim. If you fail to comply with these provisions the Service Equipment and (where applicable) the Installation Works will be conclusively presumed to be in conformity with the Contract and free from any defect or damage and you will be deemed to have accepted the Service Equipment and (where applicable) the Installation Works.

12.2 If the Service Equipment or Installation Works are not in conformity with the Contract for any reason, we will make good any shortage, defect, damage or failure to comply with description by replacement or repair.

12.3 We will not repair or replace either the Service Equipment or Installation Works if it is impossible to do so, or if we consider to do this would be excessive having regard to the value of the Service Equipment or Installation Works, the nature of the defect and the extent of inconvenience likely to be caused.

12.4 If we decide not to repair or replace for any of the reasons specified in condition 12.3, we will refund an appropriate amount of the Charges.

13 Warranty

13.1 Subject to the provisions of condition 13.2 we warrant that at the date of delivery or (where applicable) upon completion of the Installation Works and immediately thereafter throughout the Warranty Period the Service Equipment is and will remain in good working order and all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Service Equipment, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

13.2 The warranty in condition 13.1 shall not extend to:

13.2.1 modifications or additions to the Service Equipment;

13.2.2 peripheral items and consumables (lists of which are available from us);

13.2.3 defects resulting, in our reasonable opinion, from misuse or neglect of or accident to the Service Equipment or failure to follow our instructions or advice or that of the Service Equipment manufacturer;

13.2.4 the Service Equipment being subjected to abnormal physical or electrical stress, including power surges and strike by lightning;

13.2.5 the Service Equipment being damaged due to accident, neglect, misuse by you, acts of God, failure or fluctuation of electrical power or causes other than ordinary use; and

13.2.6 any failure or defective working of the Service Equipment due to any fault, failure or change in the electrical supply and or network service and connections and/or host PABX systems.

14 The extent of our liability

14.1 Neither party excludes or limits its liability for personal injury or death caused by its negligence or for fraudulent misrepresentation, or to any extent not permitted by law.

14.2 Subject to condition 14.1 above, our aggregate liability to you in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to total amount of the Charges paid to us by you within the 12 month period immediately preceding your claim.

14.3 Subject to condition 14.1 above, we shall not be liable to you in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise for direct, indirect or consequential loss of profit, revenue, business, anticipated savings, opportunity, use, wasted expenditure, loss of or damage to physical property or for any direct, indirect or consequential loss, corruption or destruction of data, whether or not we were advised of or were aware of the possibility of such damages, losses or expenses.

14.4 You will fully and promptly indemnify and hold us harmless against any claims or legal proceedings (including damages, loss, costs and expenses) which are brought or threatened against us or our sub-contractors by any third party as a result of you entering into the Contract, or arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract.

15 Intellectual Property Rights and Confidentiality

15.1 Except as expressly set out in these Conditions, the parties will not acquire any rights or licences to the other party's IPR.

15.2 All IPR in anything provided to you in order to fulfil our obligations to you under these Conditions will remain the property of us or our licensors.

15.3 Where software is supplied to you in order for you to be able to make use of the Service Equipment, we grant you a non-exclusive, non-transferable licence to use such software for that purpose only. Unless otherwise agreed in writing, any licence granted by us will expire on termination of the Contract.

15.4 You must not, and must not permit anyone else to, copy, modify, reverse engineer, decompile or otherwise endeavour to obtain the source code of such software, except to the extent permitted by law.

15.5 If requested by us, you must sign any agreement which is reasonably required by the owner of the IPR in such software to protect its rights or interests therein and you acknowledge that failure to do so may result in our being unable to supply such software.

15.6 The parties will keep in confidence any information of a confidential nature obtained under the Contract (whether written or oral) including the Charges and will not disclose such confidential information to any person (other than their employees and professional advisers who need to know the same for the purpose of the Contract and who are under a duty of confidentiality equivalent to this clause 15.6) without the prior written consent of the other party.

15.7 Clause 15.6 will not apply to:

15.7.1 any information which has been published other than through a breach of these Conditions;

15.7.2 information lawfully in the possession of the recipient before the disclosure under the Contract took place;

15.7.3 information obtained through a third party who is free to disclose it;

15.7.4 information which a party is required by law to disclose; and

15.7.5 any information which we wish to disclose to any company or person as part of a business reorganisation.

16 General

16.1 Neither party will be deemed to be in breach of the Contract or otherwise be liable by reason of any delay in performance or non-performance of any of its obligations under the Contract (other than the obligation to make payments due under it) to the extent that such delay or non-performance is caused by a matter beyond its reasonable control of which it has notified the other party, including but not limited to insurrection or civil disorder, war or military operation, international, national or local emergency, acts or omissions of government, highway authority or other competent authority, failure or delay of a supplier to perform its obligations for us, compliance with any statutory or regulatory obligation or constraint, industrial disputes of any kind (whether or not involving our employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, or acts or omissions of persons for whom it is not responsible (including in particular other telecommunications service providers). If, pursuant to this clause, either party is unable to perform its obligations under the Contract for a continuous period of six months or more, either party may terminate the Contract in whole or in part with immediate effect on giving written notice to the other.

16.2 A notice given under the Contract must be in writing and may be delivered by hand or sent by prepaid first class post facsimile or email to the addressee at such address for that party as is specified by notice to the other party. Either party may, by notice in writing to the other in accordance with this clause, change its address for service.

16.3 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party will constitute a waiver by that party of or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.

16.4 The Contract sets out the entire agreement and understanding between the parties and supersedes all prior or contemporaneous agreements, understandings or arrangements, whether written or oral, in respect of the subject matter of the Contract.

16.5 Unless expressly provided in these Conditions, no provision of the Contract will be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.

16.6 If any provision (or part thereof) of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable, that provision (or part thereof) will be deemed not to be a part of this Contract and it shall not affect the enforceability of the remainder of the Contract.

16.7 The Contract will be governed by, interpreted and construed in accordance with English law and each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of England.

System Maintenance Agreement Terms and Conditions

1 Definitions

The following terms shall have the following meanings:

1.1 'Commencement Date' means the date upon which this Agreement shall become effective, as specified in Field 4.

1.2 'Company' means ICloud Telecom Ltd of 61 Collingwood Road, Southsea, Hampshire, PO5 2HU.

1.3 'Customer' means any person, firm or company purchasing Maintenance Services from the Company.

1.4 'Equipment' means the equipment described in Field 2.

1.5 'Initial Period' means the minimum number of years during which this Agreement shall subsist from the Commencement Date, as specified overleaf.

1.6 'Maintenance Charges' means the charges payable by the Customer to the Company for the Maintenance Services.

1.7 'Maintenance Services' means such assistance as may be provided by or on behalf of the Company at the Customer's request either remotely, by telephone or by visiting the Site in order to make such adjustments or repairs to, or replacements of, defective Equipment components, which in the opinion of the Company are necessary for the proper functioning of the Equipment.

1.8 'Site' means the site specified overleaf.

1.9 'Working Hours' means between 09.00 and 17.00 on Monday to Friday inclusive, excluding any public or bank holidays.

2 Maintenance Services

2.1 The Company will provide the Customer with the Maintenance Services subject to the terms of this Agreement which, with the Company's Terms and Conditions for the Sale and Supply of Equipment (which shall apply, without limitation, to the Maintenance Services) from time to time in force shall constitute the sole and exclusive basis upon which the Company shall provide the Maintenance Services to the Customer. This Agreement must be read in conjunction with the Company's Terms and Conditions for the Sale and Supply of Equipment (having particular regard to Conditions 3.12-3.23, 14, 15 and 16 of the latter documents. In the event of a conflict between a provision of the Company's Terms and Conditions for the Sale and Supply of Equipment and a provision of this Agreement, the provision in the latter document shall prevail.

2.2 For the avoidance of doubt, any underground or overhead routes (unless specified otherwise as being included in the Maintenance Services) will not be covered. The costs of any repairs to Site wiring other than for a fault in correctly installed wiring shall be borne by the Customer at the Company's current charging rates for work and materials from time to time in force.

2.3 Where the Company replaces any defective Equipment or any part thereof, it reserves the right to supply serviceable reconditioned items in substitution thereof. The terms of this Agreement shall apply without limitation to any such substituted items and to any Equipment which embodies any such substituted items. Replaced Equipment or any part thereof shall be the Company's property unless replaced by parts supplied by the Customer at no cost to the Company.

2.4 The Company does not warrant that the provision of Maintenance Services will ensure that the Equipment operates without interruption or error.

2.5 In the case of an Equipment software fault, the Company may, at its discretion (i) install a patch fix or (ii) implement an avoidance procedure/workaround or (iii) install a later release of the software which incorporates corrections. The Customer acknowledges and accepts that later releases of software may create differences due to changes in available features and facilities. The Company shall use its reasonable endeavours to minimise such differences and to advise the Customer of known differences prior to implementation.

2.6 The Company will use reasonable endeavours to respond to requests for Maintenance Services promptly and if possible (i) within 4 working hours where the fault in the Equipment has left the Customer with no service at all; and (ii) within 16 working hours for all other faults. However, this timescale is an estimate only and time shall not be of the essence in the provision of the Maintenance Services.

2.7 Where the Maintenance Services are not available in accordance with the terms of this Agreement the Company may at its discretion repair, replace or reprogram the Equipment subject to such terms as to price and payment as it shall decide.

3 Exclusions from Maintenance Services

3.1 The Maintenance Services shall not include:

3.1.1 any assistance where there has been any modification or addition to, or maintenance of the Equipment by any person other than the Company without the Company's prior written consent;

3.1.2 ancillary items, including but not limited to answer-phones, analogue devices, call loggers, payphones, computers, servers, uninterruptible power supplies, cassettes, aerials, aerial systems, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources and any cabling and/or consumables, unless otherwise agreed in writing;

3.1.3 items which in the Company's opinion can no longer be subject to economical maintenance and for which the Company has submitted a refurbishment cost estimate payable in addition to the Maintenance Charges unless work is authorised within 30 days of the date of the estimate;

3.1.4 any maintenance undertaken outside Working Hours;

3.1.5 the cost of any equipment required to connect or reconnect the Equipment to any network;

3.1.6 the repair of any damage to the Equipment caused by theft, vandalism, fire, lightning, water or explosion;

3.1.7 defects resulting, in the Company's reasonable opinion, from misuse or neglect of, or from tampering with, or from wilful or accidental damage to the Equipment, or from the utilisation of incorrect mains voltage with the Equipment, or from unsatisfactory environmental or telephone line conditions, or from the connection of the Equipment to any unapproved accessories, attachments or other devices, or from failure to follow the instructions or advice of the Company or the Equipment manufacturer;

3.1.8 the repair or replacement of parts which the Company requires to carry out away from the Site but which the Customer for security reasons or otherwise is unwilling to release to the Company;

3.1.9 the Equipment being subjected to abnormal physical or electrical stress, including power surges;

3.1.10 the Equipment being damaged due to accident, neglect, misuse by the Customer, acts of God, failure or fluctuation of electrical power or causes other than ordinary use;

3.1.11 any failure or defective working of the Equipment due to any fault, failure or change in the electrical supply and or network service and connections and/or host PABX systems;

3.1.12 any additional maintenance or any attendance at the Site which, in either case, is requested or required because some act or omission of the Customer has prevented, suspended or delayed the performance of any obligation of the Company under this Agreement, or which is requested or required because of the Customer's failure to perform,

or suspension or delay in performing, any of the Customer's obligations under this Agreement;

3.1.13 the transportation or relocation of the Equipment save where the same has been performed at the request of the Company;

3.1.14 the maintenance of any extension wiring following the passage of the relevant warranty period (which is 6 months from wiring installation);

3.1.15 the maintenance of any Equipment not at the Site;

3.1.16 the maintenance of anything other than the Equipment;

3.1.17 the rectification of any defect or error in any software used upon or in association with the Equipment;

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

3.1.19 Equipment faults caused by telephone area code changes or changes in carriers; and

3.1.20 any maintenance arising from loss of Equipment, as the Maintenance Services are limited to repair or replacement of faulty Equipment on a like-for-like exchange basis.

4 Maintenance Charges

4.1 The full amount of the Maintenance Charges shall be payable annually in advance on or before the Commencement Date and upon each anniversary of the Commencement Date.

4.2 Additional services (including but not limited to any emergency visits outside Working Hours and the cost of any replacement parts not listed in this Agreement) will be the subject of extra charges which shall be payable by the Customer within 30 days of the date of the Company's invoice.

4.3 The Company may vary the Maintenance Charges by written notice not later than 30 days before any anniversary of the Commencement Date.

4.4 The Company reserves the right to charge for any delay incurred where any such delay is not attributable to the Company, including but not limited to any delay incurred by virtue of waiting for the Customer's representatives or others to attend the Site.

4.5 Without prejudice to the provisions of Condition 4.4, the Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of any cause attributable to the Customer directly or indirectly.

5 Customer's obligations

5.1 To facilitate the provision by the Company of the Maintenance Services the Customer shall:

5.1.1 ensure that the Equipment is kept and used in a proper and prudent manner by anybody employed or otherwise engaged by the Customer and by any other person authorised by the Company and/or the Customer to make use of the Equipment;

5.1.2 keep the Equipment and any cables and fittings associated therewith in good condition and use the Equipment in a suitable environment with proper power supplies and in accordance with instructions and advice of the Equipment manufacturer and the Company;

5.1.3 not move the Equipment or make any addition, modification or adjustment to it without the Company's prior written consent;

5.1.4 give or procure to be given to the Company or its servants or its agents at all reasonable times access to the premises at which the Equipment is situated for the purposes of inspection, repair, adjustment or replacement. In addition, the Customer will keep all records of Equipment, installation details and visit reports in a site log folder for reference to, by the Company;

5.1.5 not allow any person apart from the Company, its employees or agents to service or in any way interfere with the Equipment during the term of this Agreement. Any maintenance by the Company necessitated by such services or interference shall be charged to the Customer at the price applicable at the time;

5.1.6 maintain and make available to the Company records of the operation, maintenance and any malfunction of the Equipment;

5.1.7 provide at such times as the Company reasonably requires and at no cost to the Company all documentation, software, security tools and keys, materials and services necessary for the maintenance and testing of the Equipment, access to the Equipment including, without limitation, remote access by means of VPN (virtual private network) access, use of any repair facilities operated by the Customer and the co-operation of the Customer's personnel in diagnosing and overcoming any malfunction of the Equipment;

5.1.8 maintain sufficient insurance cover in respect of all risks to the Equipment not covered by the Maintenance Services;

5.1.9 use on the Equipment only such operating supplies, materials and parts as the Company shall advise in writing;

5.1.10 not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Company; and

5.1.11 nominate one person to be the Customer's principal contact between the parties, to whom the Company shall address all enquiries, responses and correspondence.

6 Liability

6.1 The Company shall use its reasonable endeavours to keep the Equipment in good working order but shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned.

6.2 The Company shall have no liability for any damage to the Customer's property unless occasioned by the Company's negligence.

6.3 Without prejudice to Condition 2.6 of this Agreement, if the performance of the Company's obligations under the Agreement is prevented, suspended, delayed or otherwise adversely affected by any act or omission of the Customer, the Customer's agents, subcontractors, consultants or employees, or from any fraud or negligence of the Customer, or from any failure to perform, suspension or delay in the performance of any of the Customer's obligations under the Agreement, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention, suspension, delay or adversely affected performance of the Company's obligations.

7 Fraud and Security

7.1 The Company may require user names and passwords to be used by the Customer and anybody designated as a user by the Customer in connection with the Equipment and/or the Maintenance Services.

7.2 The Customer shall ensure that user names and passwords used by it and any designated users are kept confidential to and are only used by the Customer and any designated users in connection with the bona fide use of the Equipment and the Maintenance Services.

7.3 The Customer will inform the Company immediately if the Customer knows or suspects (or ought reasonably to know or suspect) that a user name or password has been disclosed to or has become otherwise known by anybody other than the Customer or a designated user or is being used in an unauthorised way. The Customer shall ensure that neither the Customer nor any designated user changes, or attempts to change, a user name without the Company's written consent.

7.4 The Company reserves the right (at the Company's sole discretion):

7.4.1 to suspend user names and password access to the Equipment and the Maintenance Services if at any time the Company thinks that there has been or is likely to be a breach of security; and

7.4.2 to ask the Customer to (in which case, the Customer shall) change any or all of the passwords used by the Customer and/or any designated users.

7.5 The Customer will inform the Company immediately of any subsequent changes to the information the Customer supplies to the Company in connection with this Agreement.

7.6 The Customer accepts and acknowledges that the Customer's use of the Equipment and the Maintenance Services is not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access, or any unauthorised use of, either the Equipment or the Maintenance Services.

7.7 The Customer acknowledges that the Company has no control over a Customer's PABX/switch configuration, voice mail security or other feature services enabled, except

where the Company agrees to be contractually liable therefor under the Maintenance Services.

7.8 The Company shall not be responsible for any call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment or the Maintenance Services by the Customer or any third parties (including but not limited to hacking or dial through toll fraud) and the Customer agrees to pay any and all such charges. Customers must ensure that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

7.9 Any assistance given by the Company in relation to fraudulent and/or unauthorised use by the Customer or third parties (or in relation to the prevention of such use) will be on a reasonable endeavours basis only and no liability shall be accepted by the Company for any costs, charges expenses, loss or damage sustained by the Customer via fraudulent and/or unauthorised means, which shall be deemed to be beyond the Company's reasonable control (save where any such fraud and/or unauthorised use is committed by an employee of the Company acting in the course of his or her employment).

8 Force majeure

If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it, the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use his best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost despatch whenever such causes are removed or diminished.

9 Commencement and term of Agreement

This Agreement shall run from the Commencement Date and (subject to earlier termination under Condition 10 below) may be terminated on the last day of the Initial Period or on any subsequent anniversary thereof by not less than 42 days' prior written notice from either party to the other.

10 Termination on default etc

10.1 The Company may at any time by written notice (in addition to any other rights) terminate this Agreement or suspend its performance of all or any of its obligations under it immediately and without liability for compensation or damages, if:

10.1.1 the Customer materially or persistently breaches this Agreement;

10.1.2 the Customer dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt;

10.1.3 the Customer convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of the Company) for the purposes of and followed by amalgamation or reconstruction;

10.1.4 a receiver or administrative receiver is appointed over any of the Customer's property;

10.1.5 the Customer objects to a variation or amendment in accordance with the provisions of Condition 12.

10.2 If the Company terminates this Agreement for any reason during the Initial Period or any subsequent annual period, (or if the Customer wishes to so terminate the Agreement other than in accordance with the provisions of Condition 9 above), the Customer must pay to the Company on the termination date a sum equivalent to all Maintenance Charges which would otherwise have been payable to the Company during the Initial Period or any subsequent annual period, to the extent that said Maintenance >Charges have not already been paid to the Company.

11 Non-Solicitation

The Customer shall not, at any time from the Commencement Date to the expiry of 6 months after the last date of supply of the Maintenance Services or termination of the Agreement, as applicable, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as the Company's employee, consultant or subcontractor in the provision of the Maintenance Services.

12 Variation

The Company may from time to time notify the Customer in writing that it proposes to alter, add to or abrogate any provision of this Agreement, giving details of the proposed alteration, addition or abrogation. Unless the Customer within 28 days of that notice notifies the Company in writing that he objects to them, the alteration, addition or abrogation shall be deemed to be agreed and shall take effect accordingly.

13 Not assignable

13.1 The Company reserves the right to assign this Agreement and to sub-contract all or any of its obligations thereunder.

13.2 This Agreement is personal to the Customer who may not without the Company's prior written consent:

13.2.1 assign or dispose of it;

13.2.2 part with any interest in it; or

13.2.3 grant any lease or licence or delegate any of the rights conferred by it.