

A decorative graphic on the right side of the page consists of three overlapping circles of varying sizes, each composed of multiple concentric layers. These circles are connected by thin, light green lines that extend from the top-left and bottom-right corners of the page towards the circles.

Apex telephony
Mainlink Communications Ltd

Terms and conditions of service

June 2011

DEFINITIONS

"The Agreement" means these contracting terms and conditions and the Master Agreement Form.

"Mainlink" is a trading name of Mainlink Communications Limited (Registered No **5488400** at Unit 14 Hedge End Business Centre, Botley Road, Southampton, Hampshire, SO30 2AU. All references to Mainlink, shall incorporate all references to Mainlink, its Subsidiaries and/or Holding Company (where "Subsidiary" and "Holding Company" are each as defined in sections 1159 to 1162 (inclusive) of the Companies Act).

"Charge" means the amounts to be paid by the Customer for the Solution as detailed in the Site Survey form quoted EX VAT. "Customer" means the company, partnership, sole trader or other legal entity named in the Master Agreement form.

"Customer Care Centre" means the Mainlink customer care centre.

"Equipment" means the Equipment supplied by Mainlink to the Customer and required for the provision of the Solution.

"Commencement Date" means the date on which the Master Agreement Form is signed by the Customer.

"Minimum Period" means the period described as the Minimum Period in the Master Agreement Form.

"Solution" means the Mainlink Solution described in the Site Survey Form.

"Site(s)" means the Customer's place(s) of business.

"Support Service" means the support service chosen by the Customer in the Master Agreement Form and described below.

"System" means the Equipment configured and installed at Customer's Site(s) and any equipment located away from the Site(s) necessary for providing the Solution.

INSTALLATION

The Customer shall prepare the Site(s) in accordance with Mainlink instructions so that the Equipment can be installed. It shall be the Customer's responsibility to ensure that the physical infrastructure (such as electricity supply and earth connection) at the Site(s) is suitable for installing and operating the Equipment to be used in delivering the Solution.

The Customer shall provide such assistance as is necessary to enable Mainlink to fulfil its obligations under the Agreement including providing reasonable access to the Site(s) to perform any installation and maintenance work covered by the Solution.

Any installation date given is an estimate only and Mainlink shall not be liable for any failure to meet such installation date.

Mainlink shall attempt to comply with the Customer's reasonable requests regarding any installation but Mainlink decisions regarding installing the Equipment shall be final.

Mainlink shall have no liability for any loss that the Customer or any third party may suffer as a result of installation of the Equipment.

PROVISION OF THE SOLUTION

Mainlink shall provide the Solution at the Site(s) from the date on which the Equipment is installed and the System is activated.

Mainlink will make all reasonable efforts to provide the Solution in a reliable manner and in accordance with good industry practice.

The Customer shall notify Mainlink as soon as it becomes aware of a fault in the System and Mainlink will use all reasonable endeavours to provide the Customer with Support Services as per the terms of the Agreement.

Mainlink shall be entitled to interrupt its provision of the Solution:

- a) To perform required maintenance on or upgrades to the System;
- b) In the event of problems with the broadband network either at the Site(s) or in the public Internet Protocol environment;
- c) To comply with a request or order from a governmental or administrative authority or emergency service;
- d) If Mainlink has a reasonable belief that an interruption is necessary to prevent fraud taking place;

or

- e) If the Customer fails to pay any outstanding Charge within 14 days of the due date.

Mainlink will give the Customer as much notice as is reasonably possible of any such interruption and shall resume provision of the Solution in as timely a manner as is reasonably possible in the circumstances, other than in the case of failure of the Customer to pay any outstanding Charge.

SUPPORT SERVICE

The Customer shall receive the Support Service as detailed in the Order Form. The Support Service details are as follows:

Access to the Customer Care Centre Monday to Friday between 9 a.m. and 5 p.m. but not including public holidays
The Customer Care Centre shall respond to Customer queries within 4 hours either with a phone call or by remotely accessing the Customer's System.

All faults shall be dealt with in line with the Solution Service Level Agreement

THE EQUIPMENT

The Customer shall not make any changes to the Equipment without Mainlink written permission.

THE CUSTOMER'S RESPONSIBILITIES

The Customer shall not make any unauthorised or illegal use of the Equipment, System or Solution.

The Customer shall not allow any third party to perform maintenance work on the Equipment.

The Customer is responsible for storing recordings if Call Recording has been installed.

The Customer shall be responsible for arranging the broadband connection required by the Solution.

The Customer's Mainlink account manager may be able to assist with arranging a broadband connection. However, the terms of the Customer's broadband service shall not form part of the Agreement.

The Customer warrants that it is a business.

EMERGENCY (999) SERVICES

The provision of emergency (999) services forms part of the Solution.

INVOICING AND PAYMENT

Prior to the Commencement Date, the Customer shall complete the direct debit mandate (if applicable) authorising Mainlink to debit the Charge from the Customer as per the terms of the Agreement.

The Customer shall be invoiced for the Solution monthly. All fixed charges shall be invoiced in advance.

Any variable charges shall be invoiced in arrears. Payment shall be due within 30 days of the invoice date.

TERMINATION

Without prejudice to any of its rights or remedies, Mainlink may terminate the Agreement immediately by serving notice in writing to the Customer if:

- a) The Customer becomes insolvent, or is subject to a court winding up order, or enters into any compromise or arrangement under the Insolvency Act 1986;
- b) The Customer fails to pay any Charge when it is due under the Agreement after receiving 14 days written notice from Mainlink;
- c) The Customer commits a breach of the Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach after receiving 30 days written notice from Mainlink; or
- d) If a regulatory approval required by Mainlink to provide the Solution is revoked or amended and not replaced by an equivalent approval.

Subject to the foregoing paragraph, the Agreement shall remain in force during the Minimum Period.

The Agreement shall automatically renew for further yearly periods until Mainlink or the Customer provide written notice to the other party at least 90 days in advance of the final day of the Minimum Period or the last day of the yearly extension then in force.

On termination of the Agreement:

- a) All Charge(s) owed to Mainlink by the Customer shall become immediately due and payable;
- b) The Customer shall immediately stop using the Equipment, System and Solution;
- c) Mainlink shall not be liable for any further provision to the Customer of the Solution; and
- d) Paragraph "Information and Confidentiality" of this Agreement shall continue in force

LIMITATION OF LIABILITY

Neither party shall be liable to the other except as expressly set out in the Agreement.

Nothing in the Agreement excludes or restricts either party's liability for death or personal injury resulting from that party's negligence or its employee's negligence while acting in the course of their employment.

Either party's liability in contract, tort (including negligence) or otherwise arising out of or in connection with the performance of either party's obligations under the Agreement shall be limited to £500,000 for one event or series of related events and £1 million in total for all events arising in any twelve month period.

Save as provided in this Agreement, all other warranties, terms or licences, express or implied, are strictly excluded to the fullest extent permitted by law.

Without prejudice to Mainlink entitlement to the Charge, the parties shall not be liable to the other under the Agreement and/or in connection with the Solution in contract, tort (including negligence) or otherwise for any loss of revenue, loss of business, loss of data, loss of contracts, failure to realise anticipated savings or profits, or any special loss, indirect loss or consequential loss of any nature whatsoever.

The Customer must indemnify Mainlink against any loss, liability or expense suffered by or incurred by Mainlink because the Solution is used in breach of the provisions of this Paragraph "The Customer's Responsibilities". As a condition of this indemnity Mainlink must:

- i) notify the Customer promptly of any claims or legal proceedings upon becoming aware of the same;
- ii) make no admission relating to such claims or legal proceedings without the agreement of the Customer, which shall not be unreasonably withheld; and
- iii) actively consult with the Customer regarding the conduct of any action and have due regard to the Customer's representations and not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the agreement of the Customer, which shall not be unreasonably withheld.

This "Limitation of Liability" paragraph shall not affect the parties' rights and remedies in respect of any fraudulent misrepresentation.

FORCE MAJEURE

Neither party will be obliged to carry out any obligation under the Agreement where performance of such obligation is prevented due to any cause beyond the first party's reasonable control including but not limited to any act of God, severe weather, failure or shortage of power supplies, flood, lightning or fire, labour shortage or labour dispute, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, or difficulty, delay or failure in manufacture, production or supply by third parties of the Equipment resulting from the same or a similar type of force majeure event.

INFORMATION AND CONFIDENTIALITY

The Customer shall promptly provide Mainlink (free of charge) with any information Mainlink may reasonably require to enable it to activate and provide the Solution and Mainlink may use this information for purposes of providing the Solution.

Unless expressly agreed in writing, neither Mainlink nor the Customer shall use, copy, adapt, alter or part with possession of any information of the other which is disclosed under the Agreement unless ordered to do so by law. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or which the recipient obtained from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient.

INTELLECTUAL PROPERTY RIGHTS

Any intellectual property rights in computer software, documents, drawings and information supplied to the Customer in connection with the Agreement remain vested in Mainlink or the intellectual property right owner. Such computer software, documents, drawings and information are confidential and shall not be copied, disclosed or used (except for the purpose for which they were supplied) without Mainlink prior written consent.

MODIFICATION OF THE AGREEMENT

Mainlink is entitled to modify the terms of the Agreement from time to time and will display the modified Agreement at <http://www.mainlink.co.uk>. Mainlink will give the Customer at least forty-five (45) days' notice of such modification which shall take effect at the end of the forty-five (45) day period. Where Mainlink has given the Customer notice of a modification of the Agreement which will have a material adverse effect on the Customer, the Customer shall be entitled to terminate this Agreement by giving Mainlink not less than thirty (30) days prior notice in writing to that effect provided that the thirty (30) day notice period given by the Customer must have expired before the modification to the Agreement has taken effect.

NON-WAIVER AND SEVERABILITY

Failure by either party to enforce any of its rights under the Agreement shall not be construed as a waiver of that right unless the waiving party acknowledges the waiver in writing.

Part or all of any clause of the Agreement that is unenforceable or illegal shall be severed from the Agreement and will not affect the enforceability of the remaining provisions of the Agreement.

LATE PAYMENT

In addition to suspension of the Solution or termination of the Agreement, Mainlink may charge the Customer interest on any overdue Charge from the date payment is due until the Charge is paid in full at a rate of 3% over the prevailing monthly Bank of England base lending rate.

NOTICES

Notices under the Agreement must be made in writing and delivered by hand or sent by post to the other party to the address provided in the Order Form. The notice will be taken to have been delivered on the date it was delivered by hand or 24 hours after the date it was posted.

ASSIGNMENT

Mainlink reserves the right to assign, sub-contract or otherwise deal with all or any of its rights and obligations arising under this agreement. The Customer may not assign this contract without the prior written consent of Mainlink, such consent not to be unreasonably withheld.

REJECTED DIRECT DEBIT PAYMENTS/LATE PAYMENTS

As of 1st October 2011 a charge of £10.00 plus VAT will be added to accounts when the Direct Debit has been rejected by the bank for any reason.

ENTIRE AGREEMENT

The Agreement contains the whole agreement between Mainlink and the Customer and supersedes all previous written or oral agreements relating to its subject matter. The parties acknowledge and agree that: i) they have not been induced to enter into the Agreement by any representation, warranty, or other assurance not expressly incorporated into it; and ii) in connection with the Agreement their only rights and remedies in relation to any warranty, warranty or other assurance are for breach of the

Agreement and that all other rights and remedies are excluded.

GOVERNING LAW AND DISPUTE RESOLUTION

The Agreement is governed by English Law and disputes will be subject to the exclusive jurisdiction of the English Courts.

If any dispute arises in connection with the Agreement, the parties will attempt to settle it by mediation in accordance with the Otelo Alternative Dispute Resolution Scheme ("ADR Scheme"). The Customer can approach the ADR Scheme once they have exhausted the complaints procedure set out in Mainlink's Code of Practice. Alternatively, the Customer can approach the ADR Scheme if the Customer's complaint has been on-going for over 8 weeks. Mainlink will abide by any decision made under the ADR Scheme. The Customer is not bound by any decision made under the ADR Scheme and participation in the ADR Scheme by the Customer will not prevent the Customer commencing court proceedings.