

2. BASIS OF CONTRACT

- 2.1 The sending of the Order Form by Focus to the Customer constitutes an offer by Focus to the Customer to provide services and/or Equipment in accordance with these conditions, the Order and any service specific conditions ("the Offer"). The Offer may be withdrawn at any point by Focus prior to it being accepted by the Customer.
- 2.2 The offer shall be accepted and the Contract shall be formed and come into existence at the point when Focus receives the Order Form, either electronically or physically, duly signed (either electronically or physically) by or on behalf of the Customer at which point and on which date the Contract shall come into existence (subject where applicable to clauses 4.1, 5.6, 6.6 and 7.5). If Focus has not received the Order Form duly signed for or on behalf of the Customer within 12 months from the date on which it is sent to by Focus to the Customer the offer to contract with the Customer shall be deemed to have been withdrawn unless otherwise agreed between Focus and the Customer.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Focus which is not set out in the Order Form, the Service Specific Conditions or the terms (or incorporated by reference in any of them).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Focus, and any descriptions or illustrations contained in Focus' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions shall prevail. In the event of any conflict between these Conditions, any Service Specific Conditions and the Order Form, the Order Form will prevail in relation to that Service.
- 2.6 Any quotation given by Focus shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 The Customer warrants to Focus that it is entering into the Contract for the purpose of its business, trade or profession and not as a consumer.
- 2.8 Except for Installation Services that shall form part of a Contract for the supply of Equipment, each order for Maintenance Services, Data Services or Fixed Network Services shall be deemed to be a separate Contract (irrespective of whether more than one or all of them are included on the same Order Form).
- 2.9 To the extent that there is any failure or delay by Focus to supply one of the Services, that shall not entitle the Customer to terminate the Contract for the supply of any other Service or Services as the case may be (if any).

3. SUPPLY OF SERVICES

- 3.1 Focus shall supply the Services to the Customer in accordance with the Contract in all material respects. In the event that the Order Form specifies:
 - (a) the supply by Focus to the Customer of Equipment and Installation Services and/or Maintenance Services, clause 4 of these Conditions shall also apply to the Contract;
 - (b) the supply by Focus to the Customer of Fixed Network Services, clause 5 of these Conditions shall also apply to the Contract;
 - (c) the supply by Focus to the Customer of Data Services, clause 6 of these Conditions shall also apply to the Contract; and
 - (d) the supply by Focus to the Customer of IT Support Services, clause 7 of these Conditions shall also apply to the Contract.
- 3.2 Focus shall use all reasonable endeavours to deliver any Services on or by any date or dates specified in the Order Form, but any such dates shall be estimates or for guidance only and time shall not be of the essence for the performance of the Services.
- 3.3 Focus shall have the right to make any changes to any Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the relevant Services. Focus shall notify the Customer of any such change.
- 3.4 Focus warrants to the Customer that the relevant Services will be provided using reasonable care and skill, subject to clauses 4, 5, 6 and 7 of these Conditions.

4. TERMS APPLICABLE TO EQUIPMENT, INSTALLATION SERVICES AND MAINTENANCE SERVICES

- 4.1 Any Order for Equipment is conditional on the availability of such Equipment prior to the Estimated Installation Date. Focus shall use reasonable endeavours to deliver the Equipment and supply the Installation Services with reasonable care and skill in accordance with the estimated period for delivery and installation. Installation within such period is not guaranteed and time shall not be of the essence.
- 4.2 Delivery of Equipment shall be deemed to take place when the relevant Equipment arrives at the Customer's Site (prior to unloading or unpacking) as specified in the Order (Delivery) (and Delivered shall be construed accordingly). In relation to Delivery of any Equipment:
 - (a) the Customer shall be responsible for checking that all details specified in the Order are correct;
 - (b) if the Customer fails to take Delivery of any Equipment within 10 Business Days of Focus notifying the Customer that the Equipment is capable of being delivered, the Equipment shall be deemed to have been Delivered in accordance with the Contract and the Equipment shall be at the risk of the Customer and thereafter clause 4.3 shall apply to the Equipment;
 - (c) if any Equipment is to be Delivered in instalments, any delay in the Delivery of one instalment shall not entitle the Customer to reject the other instalments or to terminate the Contract; and
 - (d) the risk in any Equipment shall pass to the Customer on Delivery (or deemed Delivery in accordance with clause 4.2(b)) and the Customer shall be responsible for insuring the Equipment from that time.

- 4.3 Notwithstanding clause 4.2(d), ownership of any Equipment contracted to be purchased by the Customer shall not pass to the Customer until such time as the Customer has paid to Focus all sums due for the Equipment and the Installation Services. Unless and until ownership of the Equipment passes to the Customer (if at all), the Customer shall:
 - (a) not remove, deface or obscure any identifying mark on or relating to the Equipment;
 - (b) maintain (except where Focus is also at the time supplying Maintenance Services) the Equipment in satisfactory condition and insured it against all risks for its full price from the date of Delivery or deemed Delivery;
 - (c) not lease, charge or otherwise encumber the Equipment;
 - (d) not remove the Equipment from the Site without Focus' prior written consent;
- 4.4 If the Equipment is leased or rented to the Customer the Customer shall:
 - (a) return the Equipment at the Customer's cost to Focus immediately on request at the end of the lease or agreement; and
 - (b) permit Focus or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.
- 4.5 If the Customer is in breach of the Contract the Customer shall return the Equipment at the Customer's cost to Focus immediately on request and permit Focus or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.
- 4.6 Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 4.7 Not used
- 4.8 The Maintenance Services shall only be supplied by Focus in relation to the Equipment and to any other equipment agreed by Focus in writing from time to time. Unless agreed otherwise in writing by Focus, Focus shall supply the Maintenance Services in accordance with the Standard Service Definition as amended from time to time.
- 4.9 The Maintenance Services shall not include or be deemed to include repair or maintenance to:
 - (a) equipment that is faulty or has failed due (in whole or in part) to or caused by:
 - (i) fair wear and tear;
 - (ii) the Customer's (including its agents or workers) acts, operating errors, omissions or default;
 - (iii) failure in air-conditioning or fluctuations in electrical power;
 - (iv) any failure of equipment or software attached to or integrated to the Equipment where such equipment or software was not supplied by Focus;
 - (v) vandalism, fire, theft, water or lightning;
 - (vi) any defect or error in software loaded on to the Equipment;
 - (vii) any defect or fault in connection with services supplied to Focus by any Carrier;
 - (viii) failure by the Customer (including its agents or workers) to adequately maintain any Equipment or operate it in accordance with the manufacturer's specifications, guidelines or recommendations; or
 - (ix) any attempt by the Customer or any third party other than Focus or its duly authorised agents to repair, reconfigure, re-program or otherwise alter the Equipment or any equipment or cabling attached to it.
 - (b) ancillary items, including but not limited to, answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
 - (c) the maintenance or repair of any extension wiring, any Equipment not at the Site, or of anything other than the Equipment; or
 - (d) the reprogramming of the Equipment to provide improved or modified services or facilities.
- 4.10 In the event that Focus carries out Maintenance Services to any Equipment which has, in its reasonable opinion failed or become faulty due (wholly or partially) to any of the circumstances described in clause 4.9, Focus shall be entitled to charge additional fees for such services calculated in accordance with clause 10.5.
- 4.11 In carrying out the Maintenance Services Focus shall not (subject to clause 15) be liable for the loss of any data or information stored on the Equipment or any other equipment that may be affected by the carrying out of the Maintenance Services and the Customer shall ensure that appropriate backups of all data and information are maintained.
- 4.12 In rectifying any fault to Equipment it may be necessary for Focus to reset the Equipment's software. In such cases, Focus shall not be responsible for resetting or reloading equipment programming and user profiles.
- 4.13 The Maintenance Services are limited to the provision and repair of the Equipment by Focus on a like for like basis, which may include Focus supplying reconditioned parts for Equipment and reconditioned Equipment. Any Equipment that is removed or replaced and any parts that are removed or installed in Equipment in the carrying out of the Maintenance Services shall become or shall remain (as the case may be) the property of Focus.
- 4.14 Subject to clause 15, Focus shall not be liable for any delay in the performance of the Maintenance Services where such delay is attributable to no or poor or delayed availability of spare parts for any item of Equipment.
- 4.15 If the Customer terminates a Contract (in whole or in part) for Maintenance Services before the end of any applicable Minimum Term or Extended Term, the Customer shall pay to Focus all charges that would have accrued during the period from the expiry of the Customer's notice to terminate (or where no notice is given the date of indication by the Customer of an intention to no longer be bound by the Contract

of contract prior to the expiry of the Minimum Term or the Extended Terms as the case may be:

- (a) In this clause 6.19 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract. Where the Customer terminates the Contract for Data Services in breach of contract after the Connection Date but before the Handover Date then the Remainder of the Term shall be deemed to have commenced on the Connection Date.
- (b) The Customer acknowledges and accepts that to enable Focus to provide the Data Services to the Customer, Focus will enter into a contract for a fixed term with its supplier at the Connection Date. As is common with such contracts Focus may remain liable to its supplier whether or not the Contract for Data Services with the Customer terminates prior to the end of the Minimum Term or the Extended Term as the case may be.
- (c) In the event that the Customer is in breach of contract by terminating the Contract for Data Services otherwise than in accordance with clause 6.3 or **Error! Reference source not found.** if applicable (and/or 6.5 where the Customer is a Small Business Customer) before the end of the Minimum Term or where applicable the end of an Extended Term (as the case may be) the Customer shall pay to Focus (subject to the provisions of clause 6.19(d) as liquidated damages an amount equal to the sum that the Customer would have been liable to pay to Focus for the Remainder of the Term for the Data Services (calculated at the rate which applied at the time of termination) less any reduction that may apply pursuant to the provisions of clause 6.19(d) below. Where such termination occurs after the Connection Date but before the Commencement Date then the rate shall be the rate that would have applied at the Commencement Date had the Contract not been terminated.
- (d) If the provisions of clause 6.19(c) apply and in the event that a supplier used by Focus to provide the Data Services to the Customer reduces the amount that it charges to Focus from that which it is contractually entitled to charge in respect of the Remainder of the Term Focus shall advise the Customer of the amount of the reduction and that reduction shall be deducted from the amount payable under clause 6.19(c).

7. TERMS APPLICABLE TO IT SUPPORT SERVICES

7.1 For the purpose of the IT Support Services, the following terms shall have the following meanings:

Service Level Agreement: the service levels for the provision of IT Support Services as available on request and as may be varied from time to time

System: the hardware, operating systems and software listed in the Order Form.

Support Hours: the hours listed on the Order Form.

Out of Hours: such hours and times that not within the Support Hours.

Support Request: includes the following: a request submitted by the Customer via telephone or email for support by Focus under the IT Support Services; and automated messages for support generated by the System and sent directly to Focus for attention.

7.2 Subject to clause 2.2, the supply of the IT Support Services shall commence on the Commencement Date and continue for the Minimum Term.

7.3 The IT Support Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the IT Support Services Contract at the end of the Initial Period or the relevant Extended Term, as the case may be.

7.4 Where the Customer is a Small Business Customer, the Customer may terminate the IT Support Services Contract by giving not less than 30 days' notice in writing to Focus, such notice to expire no earlier than the end of the Minimum Term.

7.5 The provision of any IT Support Services by Focus under an IT Support Services Contract is conditional on:

- (a) Focus carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the IT Support Services; and
- (b) the Customer providing to Focus to its satisfaction accurate information and data to enable Focus to provide IT Support Services.

7.6 Subject to the Customer's payment of the Charges, Focus will provide the IT Support Services to the Customer:

- (a) during Support Hours, unless support during Out of Hours is requested by the Customer and this is agreed to be provided by Focus;
- (b) meeting or exceeding the service levels referred to in the Service Level Agreement;
- (c) remotely, unless otherwise agreed between Focus and the Customer.

7.7 In relation to the use of the IT Support Services the Customer agrees:

- (a) that the IT Support Services shall be provided by Focus remotely, unless otherwise agreed;
- (b) to permit Focus remote access to its System and inform Focus of any changes to passwords or other security devices to enable Focus to access the System;
- (c) to keep back-up copies of its operating systems and software;
- (d) to keep back-up copies of its data in line with recommendations made by the relevant software providers or Focus from time to time;
- (e) to make available such personnel of the Customer with appropriate skills, knowledge and authority to assist Focus in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults;
- (f) to promptly check that files have been restored from back-up when restoration from back-up has been tested.

7.8 Focus shall prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported and use its reasonable endeavours to respond to all Support Requests with a break fix in accordance with the response times set out in the Service Level Agreement.

7.9 Focus will seek to acknowledge all Support Requests within one working office hour of being logged.

7.10 The Customer acknowledges and agrees that:

- (a) in the event that a fault in the System is caused by an error or defect in the operating system or software, the sole responsibility of Focus will be to notify the Customer of the issue and to devise (where possible) a workaround for the Customer;
- (b) the sole responsibility of Focus in respect of any hardware issues shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty;
- (c) Focus will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt back-ups of data or back-up procedures.

7.11 In the event that the Customer requests and Focus provides IT Support Services in excess of the Customer's allocated allowance, Focus shall be entitled to charge additional fees for such services in accordance with clause 10.10.

7.12 Focus shall, at the request and cost of the Customer, provide the Customer with a report summarising the Support Requests received, the time of receipt, the time of response and the time the Support Request is cleared. Any such request must be made in writing to Focus and the Customer acknowledges and agrees that reports can only be provided by Focus in respect of the month or months following the receipt of the request.

7.13 Focus warrants to the Customer that the IT Support Services will be rendered by personnel with appropriate skills and experience to provide the IT Support Services. The Customer agrees that Focus cannot guarantee that the provision of the IT Support Services will cause the System to work without interruption or error. The warranties provided by Focus in clause 3.4 and this clause 7.13 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the IT Support Services.

7.14 The Customer warrants to Focus that it owns or has the benefit of a valid and subsisting licence to use every element of the System and it has full authority to permit Focus to perform the IT Support Services hereunder.

7.15 The Customer will fully indemnify and hold harmless Focus against all costs, expenses, liabilities, losses, damages and judgments that Focus may incur or be subject to as a result of a breach of clause 7.14.

7.16 Introduction Fees and Non Solicitation of Focus Employees

(a) In this clause 7.16 the following terms are defined as follows;

"Helpdesk Service" the service provided by Focus to Customers by which Focus provides assistance to the Customer in respect of IT matters by telephone and/or remote electronic access.

"Restricted Focus Employee" means an employee or former employee who has as an employee of Focus:

- attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer; or
- personally provided IT Support Services directly to the Customer via the Helpdesk Service; or
- both attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer and personally provided IT Support Services directly to the Customer via the Helpdesk Service

"Relevant Date" the last occurring of:

the date when the Restricted Focus Employee last attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer; and

the date when the Restricted Focus Employee last provided the IT Support Services to the Customer via the Helpdesk Service.

(b) The Customer shall not without the express written consent of Focus within 12 months from the Relevant Date employ, recruit, hire or otherwise engage a Restricted Focus Employee.

(c) If contrary to the provisions of clause 7.16(b) the Customer (or any subsidiary; parent or associated company of the Customer) does employ, recruit, hire or otherwise engage a Restricted Focus Employee without the prior written consent of Focus then by way of an introduction fee the Customer shall pay to Focus an amount equal to the greater of;

- (i) 50% of the remuneration paid to the Restricted Focus Employee by Focus in the preceding 12 calendar months prior to the Relevant Date; or
- (ii) the sum of £12,500

Such sums exclusive of VAT which if applicable is payable in addition.

(d) If the Customer (or any subsidiary; parent or associated company of the Customer) does employ, recruit, hire or otherwise engage a Restricted Focus Employee without the prior written consent of Focus then the Customer will, by way of liquidated damages, pay to Focus an amount equal to the greater of those amounts calculated or set out in clauses and 7.16(c).

7A. TERMS APPLICABLE TO MICROSOFT OFFICE 365

"Microsoft" means Microsoft Ireland Operation Limited

"Microsoft Customer Agreement" the agreement between Microsoft and the Customer made available to the Customer via the Customer's Microsoft Tenancy

"Microsoft Licence" the licence granted to the Customer by Microsoft for the use of Microsoft 365 licenses, features and services

7A.1 Microsoft 365 is made available to the Customer by Focus as the reseller for Microsoft products. The Customer acknowledges that the Microsoft 365 product shall be supplied under and in accordance with the relevant Microsoft Licence and the licence fee shall be included in the Charges. The terms associated with the use by the Customer of Microsoft 365 are governed by this Contract and the Microsoft Customer Agreement.

7A.2 Subject to a 48 hour cooling off period starting from the date of this Order Form, the Customer hereby acknowledges and accepts that they have subscribed to the

termination fees imposed by either Focus, or the applicable Airtime Provider in relation to the contract with said Airtime Provider, for the remainder of the Minimum Term.

8.24 Where the Customer terminates any Connection prior to the expiry of the Minimum Term, the Customer shall be subject to a claw-back by Focus of any discount that was conditional on the Customer completing the Minimum Term.

9. CUSTOMER'S GENERAL OBLIGATIONS AND TERMS APPLICABLE TO ALL SERVICES

9.1 In relation to the Services, the Customer:

- (a) shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) shall co-operate with Focus in all matters relating to the relevant Services;
- (c) shall provide Focus, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Focus;
- (d) shall provide Focus with such information and materials as Focus may reasonably require in order to supply the relevant Services and/or Equipment, and ensure that such information is accurate in all material respects;
- (e) shall prepare its premises for the supply of the relevant Services (where applicable);
- (f) shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (where applicable);
- (g) agrees that Focus may from time to time monitor or record calls made to Focus or by Focus to improve customer service, for training or for marketing purposes;
- (h) agrees that Focus shall not be liable or responsible for any failure or delay in the Services due to or in connection with any third party infrastructure applicable to the supply of any Services;
- (i) agrees to co-operate with any criminal investigations or any investigation of any regulatory body that is applicable to the supply of any of the Services;
- (j) be responsible for ensuring the accuracy of all specifications, drawings, sketches, plans, descriptions and instructions provided to Focus in connection with the supply of any Services and/or Equipment;
- (k) shall comply with all Service Specific Conditions; and
- (l) shall comply with the Fair Use Policy (as applicable).

9.2 The Customer is responsible and shall be liable to Focus for the use of the Services including for any Charges incurred, by the actions of any of its employees and any other person who has been given access to use the Services by the Customer and any person who gains access to use the Services for fraudulent or illegal purposes including in each case where such use was not authorised by the Customer. The Customer is strongly advised to install robust and effective security provisions to prevent unauthorised and/or fraudulent use.

9.3 If Focus' performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation or comply with any obligation or policy under the Conditions (a Customer Default):

- (a) Focus shall without limiting its other rights or remedies have the right to suspend performance of any Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays Focus' performance of any of its obligations;
- (b) Focus shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Focus' failure or delay to perform any of its obligations as set out in this clause 9.3; and
- (c) the Customer shall reimburse Focus on written demand for any costs or losses sustained or incurred by Focus arising directly or indirectly from the Customer Default.

9.4 Without prejudice to clause 9.3 or any other remedy available to Focus, Focus shall be entitled to suspend the performance of any Service or terminate the Contract relating to the relevant Service without further liability to the Customer in the event that Focus:

- (a) is obliged to comply with any order, instruction or request of any competent governmental body;
- (b) terminates the provision of telecommunications services;
- (c) in its reasonable opinion, Focus or the Carrier believes the Service are being used fraudulently or unlawfully; or
- (d) in its reasonable opinion Focus or the Carrier needs to carry out improvements or repairs to any networks or equipment relating to the applicable Services.

9.5 Focus may at its sole discretion refuse to provide support in respect of the relevant Services and/or support any Equipment if the Customer fails to pay one or more invoice by the relevant due date, and the Customer acknowledges and agrees that any such support may be withheld until Focus is satisfied that any outstanding payment has been made or outstanding balance rectified.

9.6 Focus shall not be liable for any charges, costs, fees, expenses and/or other liability resulting from or in connection with:

- (a) fraudulent or unauthorised use of a Service, Equipment and/or software and the Customer shall be responsible for and pay all charges, costs, fees and expenses resulting from or in connection with any fraudulent or unauthorised use of any Service, Equipment and/or software; and/or
- (b) fraudulent or unauthorised downloads from applications resulting in corruption, attack, viruses, interference, hacking, or other security intrusion and disclaims any liability relating thereto; and/or
- (c) any security intrusion on the Customer's server or network that is not the direct responsibility of Focus.

Software Licence

9.7 Any software (including third party software) supplied, procured and/or installed as part of the Services will be supplied under and in accordance with the relevant licensor's standard terms which will be made available to the Customer upon request.

9.8 The Customer agrees to comply with the terms of use of such software licences and will indemnify, keep indemnified and hold harmless Focus in full against all losses, liability, damages, costs, claims and expenses (including reasonable legal fees) in relation to any claim by Focus or any third party arising out of or in connection with any breach of the terms of the software licence by the Customer and its officers, directors, employees, agents, contractors and any end users.

10. CHARGES AND PAYMENT FOR SERVICES

10.1 The Charges for the Services and/or the Equipment shall be charged to and payable by the Customer in accordance with this clause 10 and in the case of Data Services and Fixed Network Services in accordance with this clause 10 and clause 11. Focus shall automatically apply an annual increase in the Charges based on the Consumer Price Index (CPI) plus 3.9%. Focus uses the CPI figure published by the Office for National Statistics (www.ons.gov.uk) in January and will apply the change in April each year. In the event that the rate of CPI is negative, Focus will only increase the Charges by 3.9% in the relevant year. For example, a previous monthly charge of £100 + VAT would become £109.30 + VAT assuming a January CPI of 5.4%.

10.2 The Charges for the Equipment and Installation Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Equipment and Installation Services shall be payable on Delivery.

10.3 The Customer shall pay any deposit specified in the Order Form within seven days of submitting the Order Form to Focus.

10.4 The Charges for the Maintenance Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Maintenance Services shall be payable annually in advance with the first payment due on the Commencement Date, and continuing to be payable thereafter on each anniversary of the Commencement Date.

10.5 Where clause 4.10 applies in relation to Maintenance Services, Focus shall be entitled to make such additional charges as are calculated in accordance with the Tariff.

10.6 Focus may charge the Customer a call out fee where such call out occurs based on incorrect information being provided to Focus or where a call out occurs but the operative is unable to gain access to the premises within the times notified to the Customer for the call out.

10.7 Notwithstanding clause 10.1 the Charges for the Maintenance Services shall increase on each anniversary of the Commencement Date by 8%.

10.8 The Charges for the IT Support Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form or these Conditions, Charges for IT Support Services shall be payable monthly in advance with the first payment due on the Commencement Date, and continuing to be payable each month thereafter on the anniversary of the Commencement Date.

10.9 Where IT Support Services are provided during Out of Hours or at the Customer's premises (or such location as is required by the Customer), the Charges shall be calculated by reference to the applicable hourly rates specified in the Order Form, or, if not stated in the Order Form, such hourly rates as specified in the Tariff. Focus may invoice the Customer in respect of such services rendered, immediately after their provision.

10.10 Where clause 7.11 applies in relation to the IT Support Services, Focus shall be entitled to make such additional charges as are calculated in accordance with or stipulated in the Tariff.

10.11 Without prejudice to clause 10.1 Focus shall not increase the monthly charge or its hourly rates in respect of the IT Support Services unless the Customer's network or user count has increased and at which point, any increase would need to be agreed by both parties prior to any increase being applied. The Customer's network and user count will be reviewed by Focus every six months from the Commencement Date.

10.12 Where Charges are calculated according to the Customer's usage, such usage shall be determined by reference to data recorded or logged by Focus and not by reference to any data recorded or logged by the Customer.

10.13 The provisions of this clause apply to any proposed increase in the Charges other than those referred to in clause 10.1 (CPI increase) clause 10.14 (third party supplier increase) and clause 10.15 (regulatory price increase). Focus reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff). Focus will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Focus in writing within 14 days of the date of Focus' notice that the Client wishes to terminate the Contract, failing which the Customer shall be deemed to have accepted the changes.

10.14 Subject to applicable regulations, Focus shall increase its Charges for any Service (including without limitation by revising any Tariff) as a result of any increase in charges made to Focus by third party providers to it by a sum equal to any such increase. In such circumstances the Customer shall not have the right to cancel the Contract.

10.15 Where Focus proposes to increase its Charges for any Service (including by revising without limitation any Tariff) as a consequence of a regulatory change and that the increase is no greater than the additional cost to Focus caused by the regulatory change, it will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. In such circumstances the Customer shall not have the right to cancel the Contract.

10.16 Except where otherwise specified in these Conditions or the relevant Order for any Service, the Customer shall pay each invoice submitted by Focus:

- (a) within 14 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Focus.

10.17 Time for payment of all Charges shall be of the essence of the Contract.

10.18 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). The Customer shall pay to Focus such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 10.19 Invoices shall be deemed to have been accepted if the Customer does not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to Focus within 30 days of the date of the invoice.
- 10.20 If the Customer fails to make any payment due to Focus under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.21 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Focus may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Focus to the Customer.
- 10.22 Focus may exercise a lien over any equipment or goods in Focus' possession belonging to the Customer, for all monies payable by the Customer to Focus.
- 10.23 Any delay in Focus raising an invoice for any Charges shall not prohibit Focus from raising an invoice for the applicable Charges at a later date and the Customer shall pay such Charges.
- 10.24 Focus reserves the right to make additional charges for paper billing, late payment, reconnection, non-direct debit payment methods and incorrect fault reporting by the Customer. Such charges are as published by Focus from time to time and are published at [Standard_Tariffs_2020.pdf](#) (thisisfocusgroup.co.uk)
- 10.25 Focus may at its sole discretion refuse to provide support in respect of the relevant Services and/or support any Equipment if the Customer fails to pay one or more invoice by the relevant due date, and the Customer acknowledges and agrees that any such support may be withheld until Focus is satisfied that any outstanding payment has been made or outstanding balance rectified.
- 10.26 Focus reserves the right to recover any costs it incurs, including legal fees, on a full indemnity basis as a result of the Customer's failure to comply with these Conditions and/or any Service Specific Conditions.
- 11. ADDITIONAL TERMS RELATING TO CHARGES FOR DATA SERVICES AND FIXED NETWORK SERVICES**
- 11.1 The Charges for the Fixed Network Services and the Data Services shall be as detailed in the Order Form (subject always to clause 10.7) and as otherwise determined in accordance with the Contract.
- 11.2 Charges for line rental are payable from the Handover Date monthly in advance by direct debit, or such other method as is specified in the Order.
- 11.3 The Customer shall pay for all Charges for calls whether made by the Customer or any third party. Subject to clause 11.4, Focus shall invoice the Customer monthly in arrears for all call Charges and the Customer shall pay such invoice within 14 days of the date of the relevant invoice by direct debit.
- 11.4 Notwithstanding clause 11.2 and clause 11.3, Focus reserves the right to invoice the Customer for Charges at any time.
- 11.5 If Focus supplies the Customer with any temporary Data Services and/or Fixed Network Services, it may charge the Customer in advance for the whole period during which the temporary services are to be provided
- 11.6 Focus shall have the right to charge a minimum fee for calls of not less than £4.50 per month in the event that the Customer's call charges do not exceed this sum in any month.
- 11.7 In respect of Fixed Network Services that include or comprise only of inbound voice services and inbound numbers, the Customer acknowledges and agrees that Focus shall have based its Charges for the Contract upon forecast information provided by the Customer about total number and duration of calls for the inbound numbers.
- 11.8 The Customer further acknowledges and agrees that Focus may apply a charge (calculated monthly and payable by the Customer in arrears) for each inbound number which, either, does not carry any traffic for any one month period, or, carries traffic which is at least 50% lower than that outlined in the forecast provided under clause 11.7.
- 12. ADDITIONAL TERMS RELATING TO CHARGES FOR MOBILE SERVICES**
- 12.1 In respect of Wholesale Mobile Services, and notwithstanding clause 10.1, the Customer acknowledges and agrees that Focus may at its discretion increase the Charges for line rental provided that Focus gives the Customer not less than 30 days' written notice prior to the increase, such increase to be capped at 5% in any one year.
- 12.2 Charges in respect of calls (including data usage) are subject to fluctuation or change by Focus without notice to the Customer.
- 13. CANCELLATION CHARGE**
- If the Customer cancels a Service or an order for Equipment, Focus may charge and the Customer shall pay a cancellation or re-stocking fee (as applicable) in respect of each such cancellation.
- 14. CONFIDENTIALITY AND DATA PROTECTION**
- 14.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party may disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall survive termination of the Contract.
- 14.2 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws. In this clause 14, references to 'Controller', 'Processor', 'Data Subject', 'Personal Data', 'Personal Data Breach', 'Process', 'Processed' and 'Processing', have the meanings set out in, and will be interpreted in accordance with, the Data Protection Laws.
- 14.3 The Customer acknowledges and accepts that Focus may use the information that the Customer provides to Focus in the course of becoming a 'Customer' (which may include Personal Data) for the purposes of supplying the Equipment and/or Services to the Customer, improving the Services, statistical analysis and marketing. Where relevant, for the purposes of Data Protection Laws, Focus 4 U Ltd. Is the Controller for any such Personal Data. Focus may share such data (or any part of it) with its third party service providers to enable Focus to supply the Equipment and/or Services to the Customer in accordance with the Contract. Focus will Process Personal Data in accordance with applicable Data Protection Laws and as set out in Focus' Privacy Policy, a copy of which can be found at [Privacy and cookie usage policy | Focus Group](#)
- 14.4 The Customer acknowledges and accepts that the Customer may provide and Focus may Process Personal Data belonging to or relating to the Customer's clients, staff and other contacts, on the Customer's behalf, and the Customer further acknowledges and accepts that Focus may share such data (or any part of it) with its third party service providers to enable Focus to supply the Equipment and/or Services to the Customer in accordance with the Contract. In respect of such Personal Data, Focus shall be the Processor, and the Customer shall at all times be the Controller.
- 14.5 Without prejudice to the generality of clause 14.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Focus for the duration and purposes of this Contract and the Customer will only disclose to Focus the Personal Data required to perform its obligations under the Contract.
- 14.6 The details of the Processing operations conducted by Focus are as set out below and as may be updated from time to time as agreed in writing between the parties:
- the subject matter of the Processing of Personal Data by Focus is the performance of the Services pursuant to the Contract;
 - subject to clause 14.7(h), Focus will Process Personal Data for the duration of the Contract, unless otherwise agreed upon in writing between the parties;
 - Focus will Process Personal Data received under the Contract only for the purposes set forth in the Contract and as generated by the Customer's (or its employees', agents' or subcontractors') use of the Services;
 - the data Processed may include the following types of Personal Data:
 - name;
 - title;
 - company;
 - email address;
 - postal address;
 - telephone number;
 - contract records;
 - position;
 - passwords;
 - The data Processed may concern the following categories of Data Subjects, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of Data Subjects:
 - the Customer's employees, directors and contractors;
 - the Customer's customers or third parties authorised by the Customer to use the Services.
- 14.7 Without prejudice to the generality of clause 14.2, Focus shall, in relation to any Personal Data Processed in connection with the performance by Focus of its obligations under the Contract:
- Process that Personal Data only on the documented written instructions of the Customer unless required to do so by Data Protection Laws to which Focus is subject, in such a case, Focus shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
 - immediately notify the Customer if, in Focus' opinion, an instruction infringes Data Protection Laws and Focus will not be required to comply with that instruction;
 - ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;
 - not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - appropriate safeguards are provided (by either Focus or the Customer) in relation to the transfer;
 - the Data Subject has enforceable rights and effective legal remedies;
 - Focus complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - Focus complies with reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Personal Data;
 - taking into account the nature of the Processing, including by appropriate technical and organisational measures, insofar as this is possible, assist the Customer, at the Customer's cost, in responding to any Data Subject access requests and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (g) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Data Protection Laws to store the Personal Data;
 - (i) maintain complete and accurate records and information and, upon the Customer's prior written request at reasonable intervals, make available to the Customer all information necessary to demonstrate Focus' compliance with this clause 14 and allow for and contribute to audits, including inspections, conducted by the Customer or the Customer's designated auditor, provided that the Customer
 - 1) provides Focus reasonable prior written notice, in any event being not less than 30 Business Days, of such audit and/or inspection being required by the Customer;
 - 2) Focus and the Customer mutually agreeing upon the scope, timing and duration of the audit and/or inspection;
 - 3) ensures that such audit and/or inspection is conducted during Business Days and business hours, being 9.00am to 5.00pm Monday to Friday with minimal disruption to Focus' business, the sub-processors' business and the business and interests of other customers of Focus;
 - 4) not causes Focus to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
 - 5) reimburse Focus' reasonable charges associated with the audit and/or inspection.
- 14.8** The Customer consents to Focus appointing third-party sub-processors of Personal Data in connection with the provision of the Services and/or Equipment under the Contract. Focus will maintain an up-to-date list of sub-processors which will be available on request. Focus confirms that it has entered or (as the case may be) will enter with the sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 14 with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such sub-processor and in either case which Focus confirms reflect and will continue to reflect the requirements of Data Protection Laws. As between the Customer and Focus, Focus shall remain fully liable for all acts or omissions of any sub-processors appointed by it pursuant to this clause 14.
- 15. LIMITATION OF LIABILITY**
- 15.1** Nothing in the Contract shall limit or exclude Focus' liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation by Focus; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.2** Subject to clause 15.1, Focus shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information;
 - (g) data loss, compromise or disclosure resulting from a security breach of the Customer's server or network; or
 - (h) any indirect or consequential loss.
- 15.3** Focus shall not be responsible for any troubleshooting, interoperability, interface issues or the functionality of any of the Customer's software, products or equipment (whether supplied by Focus under this Contract or a separate contract, or supplied by a third party):
- (a) caused by upgrades, fixes or changes to any software, products or equipment by third parties (including directly by or under the instruction of software providers);
 - (b) in relation to third party products that do not form part of the scope of the Services; or
 - (c) as a result of any upgrades that form part of the scope of Services but in respect of the Customer's software, products or equipment that are excluded from the scope of Services.
- 15.4** Subject to clause 15.1 and clause 15.2, Focus' total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, be limited to the equivalent of the total Charges paid by the Customer in that period for the Equipment and/or the relevant Service in respect of which the claim arose.
- 15.5** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 15.6** If the Customer is a consumer, nothing in these Conditions shall prejudice its statutory rights.
- 15.7** This clause 15 shall survive termination of the Contract.
- 16. TERMINATION**
- 16.1** Without limiting its other rights or remedies, Focus may terminate the Contract (in whole or in part) without further liability to the Customer by giving the Customer not less than 30 days written notice.
- 16.2** Without limiting its other rights or remedies, Focus may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so;
 - (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
 - (h) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (j) any event occurs or a proceedings are taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2(b) to clause 16.2(i) (inclusive);
 - (k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - (l) the Customer's financial position deteriorates to such an extent that in Focus' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 16.3** Without limiting its other rights or remedies, Focus may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within 30 Business Days after being notified in writing to do so.
- 16.4** Without limiting its other rights or remedies, Focus may suspend provision of the Services under the Contract or any other contract between the Customer and Focus if the Customer becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(m), or Focus reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 17. CONSEQUENCES OF TERMINATION**
- 17.1** On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Focus all of Focus's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Focus shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return any Equipment which has not been fully paid for. If the Customer fails to do so, then Focus may enter the Customer's premises and take possession of the Equipment. Until it has been returned, the Customer shall be solely responsible for the safe keeping of such Equipment and will not use it for any purpose not connected with the Contract;
 - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Contract shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 17.2** Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services or Data Services at any time prior to commencement of the supply of such Services.
- 18. FORCE MAJEURE**
- 18.1** For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Focus including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Focus or otherwise), failure of a utility service (including without limitation street cabling, network or infrastructure failure or fault), failure of a transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or utility suppliers.
- 18.2** Focus shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 18.3** If the Force Majeure Event prevents Focus from providing any of the Services for more than 10 Business Days, Focus shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

19. GENERAL

19.1 Assignment and other dealings:

- (a) Focus may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract (in whole or in part) and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Focus, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

19.2 Notices:

- (a) Any notice or other communication given under or in connection with the Contract shall be in writing, addressed to the relevant party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall:
 - (i) be sent by pre-paid first class post (recorded delivery or signed for service); or
 - (ii) e-mail with confirmation sent by pre-paid first class post (recorded delivery or signed for service).
- (b) A notice or other communication shall be deemed to have been received:
 - (i) if sent by pre-paid first class post (recorded delivery or signed for service), on the date and time the delivery service's receipt is signed for or recorded by the delivery service;
 - (ii) if sent by e-mail, one Business Day after transmission.
- (c) A notice or other communication sent by email to Focus must be sent to sales@focusgroup.co.uk and if sent to a different email address shall not be deemed to have been received.
- (d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.3 Severance:

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19.4 Waiver: A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 No partnership or agency: Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in anyway.

19.6 Third parties: A person who is not a party to the Contract shall not have any rights to enforce its terms.

19.7 Variation: Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Focus. Focus reserves the right to make changes to these Conditions from time to time.

19.8 Information about Focus: Focus operates the website www.focusgroup.co.uk. Focus is Focus 4 U Limited, a company registered in England and Wales under company number 04771242 with its registered office at Focus House, Ham Road, Shoreham-By-Sea BN43 6PA. Focus' VAT number is 837118622. Please refer to Focus' website at www.focusgroup.co.uk for information about how to contact us.

19.9 Counterparts and electronic signatures: This Agreement and any amendments to it may be executed in several counterparts, all of which taken together shall constitute one single agreement. Signatures may be made and delivered electronically where a specified online signature service is provided by Focus.

19.10 Dispute resolution: The Customer must notify any complaints or disputes to Focus in accordance with its Customer Complaints Code available at [Customer complaints code of conduct | Focus Group](#). Focus shall use reasonable endeavours to resolve any complaint or dispute. Further information concerning the Customer's rights in relation to any dispute or complaint are specified in the Customer Complaints Code.

19.11 Governing law: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

19.12 Anti-Bribery: For the purposes of this clause the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.

- (a) Each party shall ensure that it and each person referred to in clauses 19.12(a) to 19.2(iii) (inclusive) does not, by any act or omission, place the other party in breach of any Bribery Laws. Each party shall comply with all applicable Bribery Laws in connection with the performance of this Contract, ensure that it has in place adequate procedures to prevent any breach of this clause and ensure that:
 - (i) all of its personnel and all direct and indirect subcontractors of it;
 - (ii) all others associated with it; and
 - (iii) each person employed by or acting for or on behalf of any of those persons referred to in clauses 19.12(a)(i) and/or 19.12(a)(ii), involved in connection with this Contract, so comply.

- (b) Without limitation, each party shall not in connection with the performance of this Contract make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- (c) A party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause.

19.13 Modern Slavery: Each party undertakes, warrants and represents that:

- (a) neither it nor any of its officers, employees, agents or subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015;
- (c) it shall notify the other party immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of its obligations under this clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of the breaching party's obligations.

19.14 Jurisdiction: Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

20. NHS CUSTOMERS (ENGLAND ONLY)

20.1 For the purpose of this clause 20:

"Minimum Term" means five years or such other term as is agreed on the Order Form

"NHS Customers" means a GP practice or Primary Care Network (primarily funded via an NHS funding contract), an NHS Integrated Care Board or Integrated Care System in England only

"Telephony Framework" means the intended new General Practice Cloud Telephony Framework, which will operate under the existing NHS Digital Care Services Catalogue

"Qualifying Conditions" means the Qualifying Conditions set out in paragraph 8 of the letter between the parties titled "Interim Telephony Arrangements for Practices" and dated on or around 31 January 2023

20.2 For NHS Customers the following clauses will apply and take precedence over equivalent clauses under this Contract that may conflict with them. For the avoidance of doubt, the following clauses will not apply to any terms and conditions applicable to any third party financial institution or leasing company.

Contract Extensions

The following clause shall replace clause 4.6:

20.3 Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

The following clause shall replace clause 4.7:

20.4 Prior to an automatic extension taking effect Focus shall make best endeavours to organise an extended term account review meeting with the Customers nominated primary contact to discuss the service provision and extension. The purpose of this review shall be expressly stated to be related to the extension of the existing Maintenance Services Contract. No automatic extension shall be deemed valid except where Focus have made three documented attempts to arrange said account review. Where three documented attempts have been made to arrange a review meeting with the Customers primary contact (as registered within the Focus CRM software), the automatic extension shall take effect 30 days following the 3rd documented attempt where the services contract minimum term has expired. The Customer shall continue to be liable for all pro-rata service & maintenance charges (subject to cancellation under contractual terms) during the period of Focus attempting to arrange an extended term account review.

The following clause shall replace clause 5.3:

20.5 Subject to clause 5.5, the Fixed Network Services Contract shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

The following clause shall replace clause 5.4:

20.6 Prior to an automatic extension taking effect Focus shall make best endeavours to organise an extended term account review meeting with the Customers nominated primary contact to discuss the service provision and extension. The purpose of this review shall be expressly stated to be related to the extension of the existing Fixed Network Services Contract. No automatic extension shall be deemed valid except where Focus have made three documented written attempts to arrange said account review. Where three documented written attempts have been made to arrange a review meeting with the Customers primary contact (as registered within the Focus CRM software), the automatic extension shall take effect 30 days following the 3rd

The following clause shall replace clause 6.3:

20.7 Subject to clause 6.5 the Data Services Contract shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant Extended Term, to terminate the Data Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be

The following clause shall replace clause 6.4:

20.8 Prior to an automatic extension taking effect Focus shall make best endeavours to organise an extended term account review meeting with the Customers nominated primary contact to discuss the service provision and extension. The purpose of this review shall be expressly stated to be related to the extension of the existing Data Services Contract. No automatic extension shall be deemed valid except where Focus have made three documented written attempts to arrange said account review. Where three documented written attempts have been made to arrange a review meeting with the Customers primary contact (as registered within the Focus CRM software), the automatic extension shall take effect 30 days following the 3rd documented attempt where the Data Services Contract minimum term has expired. The Customer shall continue to be liable for all pro-rata Data Services Contract charges (subject to cancellation under contractual terms) during the period of Focus attempting to arrange an extended term account review.

The following clause shall replace clause 7.4:

20.9 The IT Support Services Contract shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the IT Support Services Contract at the end of the Initial Period or the relevant Extended Term, as the case may be.

20.10 Prior to an automatic extension taking effect Focus shall make best endeavours to organise an extended term account review meeting with the Customers nominated primary contact to discuss the service provision and extension. The purpose of this review shall be expressly stated to be related to the extension of the existing IT Support Services Contract. No automatic extension shall be deemed valid except where Focus have made three documented written attempts to arrange said account review. Where three documented written attempts have been made to arrange a review meeting with the Customers primary contact (as registered within the Focus CRM software), the automatic extension shall take effect 30 days following the 3rd documented attempt where the IT Support Services Contract minimum term has expired. The Customer shall continue to be liable for all pro-rata IT Support Services Contract charges (subject to cancellation under contractual terms) during the period of Focus attempting to arrange an extended term account review.

The following clause shall replace clause 8.3:

20.11 In the case of Wholesale Mobile Services, the Mobile Services Contract shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Mobile Services Contract at the end of the Initial Period or the relevant Extended Term, as the case may be.

20.12 Prior to an automatic extension taking effect Focus shall make best endeavours to organise an extended term account review meeting with the Customers nominated primary contact to discuss the service provision and extension. The purpose of this review shall be expressly stated to be related to the extension of the existing Mobile Services Contract. No automatic extension shall be deemed valid except where Focus have made three documented written attempts to arrange said account review. Where three documented written attempts have been made to arrange a review meeting with the Customers primary contact (as registered within the Focus CRM software), the automatic extension shall take effect 30 days following the 3rd documented attempt where the Mobile Services Contract minimum term has expired. The Customer shall continue to be liable for all pro-rata Mobile Services Contract charges (subject to cancellation under contractual terms) during the period of Focus attempting to arrange an extended term account review.

Fit for purpose

20.13 In addition to statutory obligations under the Sale of Goods Act 1979, should the Services encounter a technical fault that falls within the scope of services set out in the Contract, the Customer shall be entitled to cancel the relevant Services with 90 days written notice subject to all of the following:

- a. The technical fault shall be severe in nature and materially impact the core function of the service;
- b. The Customer has followed all Focus standard reporting procedures to provide the service provider with a full and detailed account of the fault(s)
- c. The Customer shall cooperate fully and without reservation with all reasonable attempts by Focus or its representatives to resolve the reported issue.
- d. The fault is found to be within the boundaries of the Services provided by Focus.
- e. The fault is directly related to a product and/or service provided by Focus.
- f. That Focus have had 90 days without restriction to resolve the fault or make reasonable remedies to the elements affected.

Mid-term contract amendments

12.14 Any amendments to the Services that are made at the request of the Customer shall be deemed to co-terminate with the original contract Minimum Term unless agreed in writing by both parties.

Early termination of services

20.15 Subject to the fulfilment of all other contractual obligations, the Customer shall be able to provide 90 days written notice of cancellation of any of the Services prior to the completion of its Minimum Term, subject to the following conditions:

- a. early termination notice cannot be submitted within the initial 6 months of any Service Commencement Date where the Services being terminated have been the subject of a material implementation stage;
- b. early termination shall only apply to recurring Services provided directly by Focus and does not extend to any financial or contractual obligations entered into by the Customer with a third party financial institution or leasing company.
- c. the Customer shall pay an early termination fee (within 30 days of delivery of a notice to terminate) equal to 30% of the remaining monthly payments due to Focus under the full term of the Contract.

Qualifying Conditions

20.16 The parties acknowledge they are free to agree contract terms suited to the Services provided by Focus and that any terms agreed shall be consistent with and not compromise compliance with the Qualifying Conditions. Where there is a conflict, the Qualifying Conditions shall prevail.

Contract Transfer

20.17 Consent by the parties is not required to transfer from this Contract to the contracts awarded pursuant to the Telephony Framework either at the time they are awarded or when compliant status is achieved under the Telephony Framework.