

Technology as a Service

Agreement Terms and Conditions

This agreement is dated as shown on the Order Form

Parties

- (1) Modern Networks incorporated and registered in England and Wales with company number 3881576 whose registered office is at Knowl Piece, Wilbury Way, Hitchin (**Lessor**)
- (2) The Company whose details appear on the Order Form (**Lessee**)

AGREED TERMS

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: the date that the Lessee takes Delivery of the Equipment.

Delivery: the transfer of physical possession of the Equipment to the Lessee at the Site.

Deposit: the deposit amount set out in the Payment Schedule.

Equipment: the items of equipment listed in the Schedule or on the Order Form, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Order Form: The form that contains the customers details that, along with these terms form the contract.

Payment Schedule: Schedule 1 or the Order Form, which sets out the sums payable under this agreement.

Site: the Lessee's premises shown on the Order Form

Rental Payments: the payments made by or on behalf of Lessee for hire of the Equipment.

Rental Period: the period of hire as set out in clause 3.

Total Loss: due to the Lessee's default the Equipment is, in the Lessor's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assign.

1.4 The Order Form and Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Order Form and schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes fax and e-mail.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Equipment hire

2.1 The Lessor shall hire the Equipment to the Lessee for use at the Site subject to the terms and conditions of this agreement.

2.2 The Lessor shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment.

3. Rental Period

The Rental Period starts on the Commencement Date and shall continue for a period of 36 months or if different, as shown on the Order Form, unless this agreement is terminated earlier in accordance with its terms.

4. Rental Payments and Deposit

- 4.1 The Lessee shall pay the Rental Payments to the Lessor in accordance with the Payment Schedule. The Rental Payments shall be paid in British Pounds and shall be made by either Direct Debit or Bank Transfer.
- 4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.
- 4.3 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.4 If the Lessee fails to make a payment due to the Lessor under this agreement by the due date, then, without limiting the Lessor's remedies under clause 10 (Termination), the Lessee shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 4.5 Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 4.6 The Deposit is a deposit against default by the Lessee of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Lessee shall, on the date of this agreement, pay a deposit of one month's Rental Payment to the Lessor. If the Lessee fails to make any Rental Payments in accordance with the Payment Schedule or causes any loss or damage to the Equipment (in whole or in part), the Lessor shall be entitled to apply the Deposit against such default, loss or damage. The Lessee shall pay to the Lessor any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period.

5. Delivery and installation

- 5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 6 (Title, risk and insurance) of this agreement.
- 5.2 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

6. Title, risk and insurance

- 6.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement)
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee (**Risk Period**) until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Lessor may from time to time consider reasonably necessary and advise to the Lessee.
- 6.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 6.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment.
- 6.5 If the Lessee fails to effect or maintain any of the insurances required under this agreement, the Lessor shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Lessee.
- 6.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.

7. Lessee's responsibilities

- 7.1 The Lessee shall during the term of this agreement:
- (a) ensure that the Equipment is kept and operated in a suitable environment.
 - (b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
 - (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an

improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately upon installation;

- (e) keep the Lessor fully informed of all material matters relating to the Equipment;
- (f) permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (g) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Lessor, together with such additional information as the Lessor may reasonably require;
- (h) not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (i) not without the prior written consent of the Lessor, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;
- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Equipment for any unlawful purpose;
- (m) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (n) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Lessor requires, or if necessary, allow the Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- (o) not do or permit to be done anything which could invalidate the insurances referred to in clause 6_(Title, risk and insurance).

7.2 The Lessee acknowledges that the Lessor shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Lessee to comply with the terms of this agreement.

8. Warranty

8.1 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within twelve (12) months from Delivery, provided that:

- (a) the Lessee notifies the Lessor of any defect in writing within ten (10) Business Days of the defect occurring;
- (b) the Lessor is permitted to make a full examination of the alleged defect;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Lessor's authorised personnel;
- (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and
- (e) the defect is directly attributable to defective material, workmanship or design.

8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.

8.3 If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 8.1, the Lessor shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

9. Liability

9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Subject to clause 9.3, the Lessor's total liability to the Lessee (including any liability for the acts or omissions of its employees, agents and subcontractors) shall not exceed the total amounts payable under this agreement.

9.3 Nothing in this agreement limits any liability which cannot legally be limited including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation

9.4 This agreement sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality,

fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

9.5 Subject to clause 9.3, neither party shall be liable under this agreement for any:

- (a) loss of profit;
- (b) loss of revenue
- (c) loss of business; or
- (d) indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

10. Termination

10.1 Without affecting any other right or remedy available to it, the Lessor may terminate this agreement with immediate effect by giving notice to the Lessee if:

- (a) the Lessee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment;
- (b) the Lessee commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- (c) the Lessee 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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the Lessee 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 (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (e) 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 Lessee (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Lessee (being a company);
- (g) the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the Lessee or a receiver is appointed over all or any of the assets of the Lessee;
- (i) a creditor or encumbrancer of the Lessee 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 the Lessee's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(i) (inclusive);
- (k) the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

10.2 For the purposes of clause 11.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Lessor would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clause 7,

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

10.3 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

11. Consequences of termination

11.1 Upon termination of this agreement, however caused:

- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;
 - (ii) any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

- 11.2 Upon termination of this agreement pursuant to clause 10.1, any other repudiation of this agreement by the Lessee which is accepted by the Lessor or pursuant to clause 10.3, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less:
- (a) a discount for accelerated payment at the percentage rate set out in the Payment Schedule; and
 - (b) the Lessor's reasonable assessment of the market value of the Equipment on sale.
- 11.3 The sums payable pursuant to clause 11.2 shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 12.1(b). Such sums may be partly or wholly recovered from any Deposit.
- 11.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

13. Confidential information

- 13.1 Each party undertakes that it shall not at any time, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

14. Assignment and other dealings

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

15. Entire agreement

- 15.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. No partnership or agency

- 17.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Further assurance

Each party shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

19. Counterparts

- 19.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19.2 Transmission of the executed Order Form by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

20. Third party rights

20.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

20.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

21. Notices

21.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number or sent by email to the address specified in the Order Form.

21.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) if sent by pre-paid first-class post next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 22.2(c), business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.4 A notice given under this agreement is not valid if sent by email.

22. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

23. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. Severance

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

24.2 If any provision or part-provision of this agreement is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. Governing law

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

26. Jurisdiction

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

This agreement has been entered into on the date stated on the Order Form.