Intouch Advance: Hosted IP Terms and Conditions

Unless expressly stated by Intouch Advance Ltd in writing all quotations are made and Order Forms accepted on the following terms and conditions:

1. Definitions

In the Agreement the following terms will have the following meanings:

"Intouch Advance" means Intouch Advance Ltd whose principal place of business is at Festival Building, Ashley Lane, Shipley, West Yorkshire, BD17 7DB

"Administrative Charge" means a monthly fee of 2.5% imposed by Intouch Advance for handling payments made other than by direct debit as provided in Clause 7.3 below;

"Customer" means the person or entity whose details are set out on the Order Form; "Customer Equipment" means any telecommunications apparatus or system [required by the Customer to receive the Service save for the Service Equipment];

"Order Form" means a request for Services signed by the Customer and delivered to Intouch Advance;

"Minimum Term" unless otherwise set out on the Order Form means a minimum period of 12 months;

"Service" means the services described on the Order Form;

"IP Centrex Services" means a centrally hosted provision of telephony services generally provided by a PBX;

"Broadband" means the provision of a digital subscriber line;

"Service Equipment" means the equipment leased by Intouch Advance to the Customer as specified on the Order Form;

"BT" means British Telecom PLC; BT Lines" means the BT lines specified as such on the Order Form; "Terms" means these terms and conditions;

"Agreement" means the Order Form and these Terms;

"Customer's Premises" means the premises specified as such on the Order Form; and "Software" means the operating language and programmes that provide functionality.

"Network" means the telecommunications network used by Intouch Advance for the provision of the Service including, without limitation, the underlying transport, and switching mechanisms allowing transmission, and termination of calls made by the Customer.

2. Acceptance

2.1. The Customer may from time to time deliver Order Forms to Intouch Advance on these Terms. Any Order Forms will be in such form as is notified to the Customer by Intouch Advance from time to time. Intouch Advance may in its sole discretion accept such Order Forms. 2.2

2.2. Each Order Form will be binding on Intouch Advance upon the earlier of the date that Intouch Advance indicates its acceptance in writing by sending out a welcome letter to the Customer or the date that Intouch Advance commences provision of the Services. Prior to the provision of the Services

the Customer agrees that Intouch Advance may carry out such credit checks as it deems necessary as set out in Clause 8.3.

3. The Service

3.1. Intouch Advance agrees to provide the Service to the Customer and the Customer agrees to use the Service on the terms set out in the Agreement.

3.2. Intouch Advance will provide the Service with the skill and care as may be expected of a competent telecommunications provider experienced in supplying services similar to the Service.

3.3. Intouch Advance will use reasonable endeavours to ensure that the Service is available for use by the Customer. The Customer acknowledges that owing to the nature of telecommunications networks, it is impossible to provide a fault free Service. The quality of the Service depends on both the quality and availability of the network to which the Customer is connected and also on other telecommunications networks to which the person being called is connected.

3.4. Intouch Advance will respond to any reported fault with the Service as soon as reasonably practicable during Intouch Advance's normal working hours and will use all reasonable endeavours to correct any fault [caused by Intouch Advance].

4. Broadband

4.1. Where IP Centrex Services are to be supplied by Intouch Advance to the Customer, the Customer is responsible for providing a Broadband connection either through Intouch Advance under a separate contract of supply or through an approved supplier of suitable broadband services (in accordance with criteria to be provided by Intouch Advance).

4.2. Intouch Advance will not be responsible for any failure to deliver the Service when the Customer's obligation set out in Clause 4.1 has not been fulfilled.

5. Access

5.1. Intouch Advance or its appointed agent will deliver and install the Service Equipment at the Customer's Premises. Intouch Advance will take all reasonable steps to deliver and install the Service Equipment by such date as is advised, however any delivery date specified will be an estimate only. Intouch Advance accepts no liability for failure to meet the delivery date.

5.2. The Service Equipment will remain the property of Intouch Advance at all times. The Customer must not add to, modify or in any way interfere with the Service Equipment, nor allow anyone else other than someone authorised by Intouch Advance to do so. The Customer will be liable for any loss or damage to the Service Equipment except where such damage is due to fair wear and tear or is caused by Intouch Advance or anyone acting on Intouch Advance's behalf.

5.3. Intouch Advance grants the Customer a non-exclusive, non-transferable licence to use the Software solely in respect of the provision of the Service. Such licence will terminate immediately upon termination of the Agreement.

5.4. Where access to the Service is facilitated through BT number porting, the Customer authorises Intouch Advance to have the numbers from the BT Lines routed by Intouch Advance instead of BT and to forward appropriate details of the Customer's porting application for the Service to BT. The Customer will receive advance notification of the change of service from BT to Intouch Advance. The

Customer acknowledges that Intouch Advance's ability to provide the Service is conditional upon BT porting the numbers.

6. Use Of The Service

6.1. During the term of the Agreement, the Customer will not use another Telecommunications service provider or network operator to provide any indirect or direct access telephony service.

6.2. The Customer will ensure that the Customer Equipment is in proper working order and complies with all applicable standards and approvals for network connection. The Customer will not do anything that may damage or affect the operation of the Network.

6.3. The Customer will ensure that the Service is used for the purpose for which Intouch Advance has authorised in writing and is not used either by the Customer or any third party for any fraudulent, criminal, defamatory, offensive, obscene or abusive purpose or so as to constitute a violation or infringement of the rights of Intouch Advance or any third party. The Customer undertakes to comply with all applicable laws and regulations and all reasonable instructions of Intouch Advance in relation to the Customer's use of the Service and the Service Equipment.

6.4. If the Network is to be used to carry alarm signals, then Intouch Advance will not accept liability for failure to deliver an alarm signal due to

- the Network going down;
- suspension of the Customer's account or
- reasons outside Intouch Advance's reasonable control including but not limited to any technical failure of the Network, because the Network is being tested, modified or maintained or if access to the Network is denied.

6.5. The Customer will not permit, enable or allow a third party to use any part of the Network unless authorised by Intouch Advance in writing.

6.6. The Customer hereby agrees to indemnify Intouch Advance forthwith upon demand against any loss, damage, cost or expense suffered or incurred by Intouch Advance in respect of any breach by the Customer of Clause 6.5.

6.7. Intouch Advance will have the right to recover from the Customer all reasonable costs incurred by Intouch Advance in investigating or remedying any fault with the Service unless the fault was caused by Intouch Advance's acts or omissions or by the operation of any Service Equipment (in Intouch Advance's reasonable opinion).

6.8. Any call packages where the subscription cost is to include calls to 01/02/03 numbers is subject to a fair usage policy. This totals 2000 minutes per subscription per month and not more than 15% can be to 03 numbers.

7. Payment

7.1. The Customer will pay Intouch Advance the set up fees and the monthly fees stipulated on the Order Form. The Customer will pay all charges for calls made through the Service as are set out in Intouch Advance's current tariff (a copy of which is available on written request).

7.2. All prices are exclusive of VAT and all prices are subject to increase upon Intouch Advance giving not less than 30 days' prior written notice to the Customer.

7.3. The Customer will pay all sums due to Intouch Advance under the Agreement in full without any set off whatsoever.

7.4. Intouch Advance will invoice the Customer monthly for charges under the Agreement plus VAT.

7.5. Payment of Intouch Advance's invoices is due within 10 working days of the invoice date by direct debit. An Administrative Charge will be added if payment is made other than by direct debit.

7.6. The time of payment of all sums due to Intouch Advance under the Agreement will be of the essence. If Intouch Advance does not receive payment in full upon the due date, Intouch Advance will be entitled to levy a late penalty charge at a rate at a rate of 3% per annum above the base rate of the Bank of England on any unpaid overdue balance (calculated on a daily basis).

7.7. All charges payable under the Agreement will be calculated by reference to data recorded or logged by Intouch Advance and not by reference to data recorded or logged by the Customer.

7.8. Subsequent to carrying out a credit check pursuant to Clause 8.3 Intouch Advance may require a cash deposit or a bank guarantee to cover charges which INTOUCH ADVANCE might reasonably expect the Customer to incur under the Agreement or may place a limit on the Customer's account for charges that can be accumulated by the Customer before payment is received by Intouch Advance in respect of provision of the Service.

7.9. Intouch Advance reserves the right to change any tariff where the Customer is in breach of any term of the Agreement.

8. Provision Of Information

8.1. The Customer undertakes promptly to provide Intouch Advance free of charge, with all information and cooperation as it may reasonably require to enable Intouch Advance to proceed without interruption with the performance of its obligations under the Agreement.

8.2. Intouch Advance warrants to keep any data or other information it obtains in the performance of its obligations under the Agreement in accordance with relevant data protection legislation and not to use or disclose such information for any unlawful purpose.

8.3. Intouch Advance reserves the right to carry out a credit check against the Customer and may register information about the Customer and the Customer's account with credit reference agencies. Intouch Advance and other lenders may use this information to make credit decisions. This information may also be used to prevent fraud and to trace debtors.

8.4. Definitions used in this Clause 8.4 shall have the same meanings as in the Data Protection Act 1998 ("DPA"). In relation to "personal data" of which the Customer is the "data controller" and which Intouch Advance "processes":

(i) Intouch Advance warrants that Intouch Advance has in place now and will on a continuing basis take all appropriate technical and organisational measures against unauthorised and unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

(ii) Intouch Advance will act only in accordance with the Customer's instructions, provided they are reasonable and in accordance with the law.

8.5. The parties acknowledge that Intouch Advance is acting as a "data processor" (as defined in the DPA) in respect of and in connection with any call recordings made and stored by the Customer using the Services.

9. Liability

9.1. Nothing in the Agreement will exclude or limit Intouch Advance's liability for Death or personal injury resulting from the negligence of Intouch Advance or its employees while acting in the course of their employment or for fraudulent misrepresentation or for any other liability that cannot by law be excluded.

9.2. Subject to 9.1 and 9.3, in the event that the Service is not available to the Customer for a continuous period of 12 hours or more in any one day and that unavailability is attributable entirely due to the fault of Intouch Advance, Intouch Advance's total financial liability to the Customer for such failure will be limited to the sum of 5% of the charges payable by the Customer to Intouch Advance in the average month during the quarter prior to the event of default.

9.3. Intouch Advance's entire financial liability in respect of all causes of action arising in each calendar year for breaches of the Agreement or of any other duty to the Customer or for negligence in connection with the subject matter of the Agreement will not exceed the lesser of:

- 60% of the total charges paid by the Customer for the Service in such calendar year; or
- £1000.

9.4. Subject always to Clause 9.1, in no event shall Intouch Advance be liable to the Customer for any of the following however and whenever arising:

- loss of profits; or
- loss of business; or
- loss of revenue; or
- loss of data; or
- loss of goodwill; or
- loss of anticipated savings; or
- any special, indirect, consequential or pure economic loss, damage, costs or expense.

9.5. Intouch Advance will not be liable for failure to perform any of its obligations under the Agreement if it is prevented from doing so by any circumstances beyond its reasonable control, including, but not limited to, the acts or omissions of a third party telecommunications network operator or through the Customer's acts, omissions negligence or default.

9.6. In the event of any failure in the Service, Intouch Advance will not be liable to the Customer for any charges incurred by the Customer should the Customer divert its traffic to another service provider.

9.7. The provisions of this Clause 9 will continue to apply notwithstanding the termination of the Agreement.

10. Suspension Of Service

Intouch Advance may at its sole discretion elect to suspend with immediate effect the provision of the Service until further notice without liability or compensation to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:

- The Customer is in breach of any term of the Agreement;

- The Customer prevents or delays any prearranged maintenance from being carried out;
- The Customer is suspected, in Intouch Advance's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the Service;
- Intouch Advance is obliged to do so in order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority.

If Intouch Advance suspends the service under the Agreement then Customer will reimburse any costs and expenses reasonably incurred as a result of such suspension and/or the services being reinstated.

If Intouch Advance chooses to suspend the Service this will not prevent Intouch Advance from also taking other action to terminate the Agreement under Clause 11 below.

11. Term And Termination

11.1. Subject to Clauses 11.3 and 11.4, the Agreement will start on the date that Intouch Advance sends a welcome letter to the Customer, first makes the Service available to the Customer or the date of installation of the Service Equipment, whichever is the earlier and will remain in effect for the Minimum Term and thereafter for further periods of one year unless and until terminated in accordance with this Clause 11.

11.2. Subject to Clauses 11.3 and 11.4, either party may terminate the Agreement on not less than 90 days' prior written notice in writing to expire at the end of the Minimum Term or on an anniversary of the expiry date of the Minimum Term.

11.3. In the event that the Service is added to or varied in any way then an additional twelve months from the date of the addition or variation (as applicable) will be added to the contract period ("Extended Term") unless Intouch Advance agrees otherwise in writing at its absolute discretion, and the Agreement will remain in effect for the Extended Term and thereafter for further periods of one year unless and until terminated in accordance with this Clause 11.

11.4. Either party may terminate the Agreement on not less than 90 days' prior written notice in writing to expire at the end of the Extended Term or on an anniversary of the expiry date of the Extended Term.

11.5. Without prejudice to their other rights under the Agreement, Intouch Advance and the Customer may terminate the Agreement with immediate effect if:

- The other party has committed a material breach of the Agreement which is incapable of remedy or in the case of a remediable breach, the other party fails to remedy within 14 days of having been requested to do so by the non-defaulting party; or
- The other party ceases trading, becomes bankrupt or insolvent or any insolvency proceedings are begun against it including the appointment of a receiver (including an administrative receiver in relation to the Customer) or any of its assets.