



Panther Telecom Ltd - Terms and Conditions

1. Definitions

1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

"Access Services" means the services supplied to the Customer to enable access to the Network

"Act" means the Communications Act 2003

"Additional User" means any party other than the Customer or User who makes use of a service or facility derived from the Services including any ultimate end user

"Agreement" means this agreement including any schedule hereto, as the same may be varied amended or extended from time to time in accordance with the terms of this Agreement

"Annual Minimum Call Spend" means the annual sum of money the Customer agrees with Panther will be the Customers minimum spend on Call Charges during each year beginning on the Switchover Date or any anniversary thereafter during the term of the Agreement

"Authorisation" means the authorisation granted pursuant to the Communications Act 2003 that authorises the Network Operator to run a public communications network

"Average Call Spend" means the average charge incurred by the Customer for Calls on a monthly, quarterly or annual basis

"Broadband" means a connection between an End User's site and the underlying network, which carries data in both directions using a broadband protocol

"Business Day" means any day which is not a Saturday, Sunday or a bank or public holiday in England

"Call" means a signal, message or communication that is silent, spoken or visual

"Call Charges" means the sum of money (plus VAT) which is payable to Panther by the Customer per Call

"Charges" means all sums (plus VAT) payable by the Customer to Panther in respect of any and all Services provided by Panther, including but not limited to Hardware, Software, Line Rental, Broadband Rental, Support, Call Charges, Maintenance

"Code" means any Code of Practice relevant to the Services issued by Phonepay Plus or OFCOM as amended from time to time

"Commencement Date" means the date on which any Service is provided by Panther to the User

"Confidential Information" means all information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of each party (including, for the avoidance of doubt, any information in relation to the Panther Telecom services) and which may be reasonably regarded as the confidential information of the disclosing party

"Customer" means the person with whom Panther makes this Agreement. It includes a person who Panther reasonably believes is acting with the Customer's authority or knowledge

"Data Protection Legislation" means the Data Protection Directive 94/46/EC as implemented in each member state, including the Data Protection Act 1998 and the Privacy and Electronic Communicative (EC Directive) Regulations 2003

"Early Termination Charges" means the charges (plus VAT) for early termination calculated pursuant to clause 14.5

"Equipment" means equipment that is not part of the Network and which the Customer uses or intends to use with the Service

"Fault" means the continuous or intermittent loss of the ability to use the related service for the purpose for which it was provided

"Indirect Access" means a service which enables a User to choose to route certain outgoing calls via a choice of telecommunications networks by prefixing an access code to initiate them

"Installation Date" means the same as "Commencement Date"

"Intellectual Property Rights" means a) patents, designs, trademarks and trade names (whether registered or not), copyright and related rights, database rights, know-how and confidential information; b) all other intellectual property rights and similar or equivalent rights in the world which currently exist or are recognised in the future; and c) applications, extensions and renewals in relation to any such rights

"Line" means a physical connection to the Network

"Minimum Term" means the period of 12 (twelve), 24 (twenty four), 36 (thirty six) or 60 (sixty) months, as notified to the Customer by Panther and/or specified on the Order

"Network" means a) the fixed line telecommunications network operated by the Network Operator, and/or b) the system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of (i) speech, music and other sounds, (ii) visual images signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images or (iii) signals serving for the actuation or control of machinery or apparatus

“Network Operator” means the network operator who operates a network to which the Line is connected in accordance with an agreement between the Network Operator and Panther

“Notification” means a notification provided by Panther to the Customer regarding the Customer’s transfer to Panther, such notification to include details of the Switchover Date, Installation Date, Commencement Date or any other date relevant to the services being provided by Panther. Such notification may take the form of a letter, electronic mail, SMS or other text service, or other form of communication

“Number Translation Services” means telephone numbers with the prefixes 0808, 0845, 0870, 0871 and other non-geographic services provided by Panther

“Order” means any request executed by both parties for the supply of Services, the term and charges for which, together with any additional terms and conditions, are set out in that order form

“Panther” means Panther Telecom Ltd (Company number 6290704) whose registered office is 1 Richmond Road, Lytham St Annes, Lancashire, FY8 1PE

“Parties” means Panther and the Customer

“Phone Box” means any kiosk, booth, acoustic hood, shelter or similar structure in which a phone is installed for the provision of telephone services to the public

“Premises” means the place where the Service is or will be provided, usually the Customer’s place of business unless agreed otherwise

“Price List” means the price list as set out on the Website and/or available from Panther on request, as varied by Panther from time to time

“Relevant Standards” means the standards designated under Section 22 of the Telecommunications Act 1984 as amended by the Communications Act 2003

“Rental Charges” means all sums (plus VAT) payable by the Customer to Panther in respect of any Services provided by Panther that incur a regular recurring Charge, including but not limited to Line Rental, Broadband Rental, Support and Maintenance

“Service” means all or part of the Service as detailed in the Schedules attached to this Agreement and any related products and/or services that Panther agrees to provide to the Customer under this Agreement

“Service Provider” means any Public Electronic Communications Network Provider as defined in the Communications Act 2003

“Spam” means an unsolicited marketing message not permitted under the terms of the Data Protection Legislation

“Special Entry” means any additional entry to the Phone Book requested by the Customer to Panther Telecom Ltd supplemental to the regular information provided relating to the Customer in any phone book issued by BT

“Switchover Date” means the date on which a service is transferred from one supplier to another

“User” means a person who is the ultimate user of services which depend upon the provision of a Panther Telecom service

“VAT” means Value Added Tax as defined in the Value Added Tax Act 1994 and including any other tax from time to time replacing it or of a similar fiscal nature

“Website” means the website www.panthertelecom.co.uk and any other website that Panther may develop and publicise from time to time

- 1.2 The Condition and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.3 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.4 Any phrase introduced by the expressions “includes”, “including” or “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 Any reference to a statute, statutory provision or subordinate legislation (together **“legislation”**) shall (except where the context otherwise requires) (i) be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation and (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.

2. Services

- 2.1 During the term of this Agreement, Panther shall provide the Services to the client in accordance with the provisions of this Agreement and Schedule attached hereto in consideration of the charges.
- 2.2 Panther reserves the right to change the technical specification of the services (provided that such changes do not materially affect the performance of the services) where necessary for operational reasons, statutory or regulatory requirements.
- 2.3 Panther will use the reasonable skill and care of a competent telecommunications service provider to provide the Service however, Panther cannot guarantee that the Service will always be fault free as other third party companies may provide the Network.
- 2.4 Panther will use all reasonable endeavours to provide the Service by the date agreed with the Customer, such date being the date informed to the Customer via the Notification process.

3. Actions Panther may have to take

- 3.1 From time to time Panther may have to:
 - a) change the code or telephone number or the technical specification of the Service due to mandatory changes imposed on Panther; or
 - b) interrupt the Service for operational or emergency reasons; although Panther will restore the interrupted Service as quickly as possible; or

- c) give the Customer instructions that Panther believe are necessary for health or safety reasons, or to maintain the quality of the Service that Panther supplies to the Customer or to other customers.

4. Phone Numbers

- 4.1 The Customer may not sell or agree to transfer any numbers provided to it for use with the Service.
- 4.2 The Customer must ensure that the phone number for the Service is not advertised in or on a Phone Box without Panther's prior written consent. If this happens, Panther will be able to suspend the Service pursuant to clause 16.

5. Codes of Practice

- 5.1 In response to OFCOM's publication of its "Statement and Notification on Protecting Citizens and Consumers from Mis-selling of Fixed-Line Telecoms Services" (the Ofcom Guidelines") which require all providers of fixed-line voice telephony services to maintain and follow a Sales and Marketing Code of Practice and a Dispute Resolution Code of Practice, Panther have produced these Codes of Practice, copies of which are available on the Panther Website.

6. Call Monitoring

- 6.1 Panther may occasionally monitor and record calls made to or by Panther by or to the Customer, for training purposes, to improve the quality of its customer services and to assist with complaint handling.

7. Use of the Customer's information

- 7.1 Panther complies with its obligations under the Data Protection Act 1998 ("the Act"). Panther will only use any Personal Data (as defined within the Act) obtained from the Customer as a result of providing the Service for the purposes of administering the Customer's account and notifying the Customer of changes to the Service, enabling Panther or its third party suppliers to supply the Service to the Customer and for invoicing purposes.
- 7.2 Panther will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Panther's own products and services which it considers may be of interest to the Customer, unless the Customer requests Panther not to do so. If the Customer or a user does not want its details to be used in this way then the Customer should write to Panther at the address specified on the Contact Us page of www.panthertelecom.co.uk.
- 7.3 The Customer agrees that Panther may search the files of credit reference agencies which will keep a record of that search. Panther may also carry out identity and anti-fraud checks with fraud prevention agencies. If the Customer gives false or inaccurate information and we suspect fraud, Panther will record this. Details of how the Customer conducts their account may also be disclosed to those agencies. The information may be used by Panther and other parties in assessing applications and making decisions about credit and credit related services from the Customer and members of the Customer's household and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detection and prevention. Information may be used by Panther and other parties for checking the Customer's identity, statistical analysis about credit, insurance, fraud and to manage the Customer's account and insurance policies. Panther may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to Panther.
- 7.4 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). For the purposes of this application you declare that the Customer and the Customer's financial associate(s) are financially independent and the Customer requests that their application be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of their application. The Customer believes that there is no information relating to their financial associates that is likely to affect Panther's willingness to offer the Services to them. The Customer authorises Panther to check the validity of this declaration with credit reference agencies and if Panther discover any associated records, which would affect the accuracy of this declaration Panther may suspend the Service or terminate this Agreement with immediate effect. For the purpose of this clause a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.
- 7.5 The Customer authorises Panther to use and disclose, in the UK and abroad, information about them and their use of the Mobile Services and how they conduct their account for the purposes of operating their account and providing the Customer with the Mobile Services or as required for reasons of national security or under law to our associated companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency and fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as Panther. The Customer agrees to this information being used by Panther for credit control purpose and fraud and crime detection and prevention. The Customer can obtain further details from our public registration held by the Information Commissioner. If the Customer wishes to have details of the credit reference or the fraud prevention agencies from whom Panther obtains and with whom Panther records information about the Customer or receive a copy (Panther may charge a fee) of the information Panther holds about the Customer, please write to us at the address detailed in clause 6.2, stating the Customer's full name, address, account number and phone number.
- 7.6 The Customer also agrees to the information described in paragraph 6.6 being used, analysed and assessed by Panther and the other parties identified in paragraph 6.6 and selected third parties for marketing purposes including amongst other things to identify and offer the Customer by phone, post, the Network, phone, email, text (SMS), media messaging or other means, any further products services and offers which we think might interest you. If the Customer does not wish their details to be used for marketing purposes, please write to Panther at the address detailed in clause 6.2, stating the Customer's full name, address, account number and phone number.

8. Software

- 8.1 If Panther supplies or provides any third party software to the Customer pursuant to this Agreement then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision, provided such terms and such conditions are not inconsistent with the Customer's rights under this Agreement. The Customer undertakes to use such software strictly in accordance with such terms and conditions, which have been provided to it by Panther.

9. Duration of this Agreement

- 9.1 This Agreement will come into force on the date on which the Customer orders the Service. The Service is supplied by Panther subject to a Minimum Term unless this Agreement is otherwise terminated prior to expiry of the Minimum Term in accordance with its terms. The Minimum Term will commence on the Commencement Date and / or Switchover Date.

10. Repairing Faults

- 10.1 If there is a Fault, the Customer must report this directly to Panther.
- 10.2 The process for Fault handling of each product or service is detailed in the individual schedule relating to that product or service.
- 10.3 Panther will not be responsible for any Faults in respect of any Customer who does not pay the Charges pursuant to this Agreement.
- 10.4 Panther will use its best endeavours to ensure that a fault exists prior to requesting an engineer to investigate. If, after investigation by an engineer it is apparent that no fault exists, or the fault is proved to lie with the customer's equipment, then Panther will raise a charge of £100 to cover the cost of engineering time.

11. Paying Panther's charges for the Service

- 11.1 The Customer agrees to pay all of the Charges due in respect of the Service as set out in the Price List.
- 11.2 The Customer is responsible for all Call Charges incurred as a result of use of the Service by the Customer or any third party using the Service at the Premises.
- 11.3 Invoices giving a summary of charges shall be supplied to the Customer monthly, via email to the Customers registered email address, or by post. Detailed invoice breakdowns will be available to the customer via electronic means (e-mail or via the Panther website). If the customer requests a detailed invoice to be sent by post Panther will make a charge for this, in accordance with the Price List.
- 11.4 If the Customer does not pay an invoice within 16 (sixteen) calendar days of the date of that invoice, Panther will send the Customer a reminder. If Panther does not receive payment of that invoice within 7 (seven) calendar days of the date of that reminder, Panther will issue a second reminder. If Panther does not receive payment of that invoice within 7 (seven) calendar days of that reminder, Panther will issue a third reminder, stating that services will be suspended if payment is not received within 5 calendar days of the date of that third reminder letter.
- 11.5 Panther reserves the right to charge the Customer daily interest on any amounts that are overdue by more 14 calendar days, at a rate equal to 4% above the base lending rate of HSBC Bank plc for the period beginning on the date on which payment is due and ending on the date on which payment is made.
- 11.6 Panther reserves the right to issue the Customer with an interim invoice if the Customer has significantly exceeded its Average Call Spend. Panther may also ask the Customer to pay a deposit at any time, as security for payment of future invoices.
- 11.7 Rental Charges are payable from the Commencement Date or Switchover Date of the service and are invoiced 2 months in advance. If Panther agrees to provide the Customer with a temporary Service, Panther may require the Customer to pay Rental Charges in advance for the whole period that the Customer requires the Service.
- 11.8 Where the Customer uses Panther for Line Rental then the Customer is required to also use Panther for Calls over that Line. Should the Customer use an alternative carrier for Calls once this Agreement has commenced, or prevent Panther from carrying Calls in any monthly period so that the Call Charges are materially reduced when compared to the Customer's current average invoicing profile, Panther shall be entitled to charge the Customer 50% of the Average Call Spend or £30 plus VAT per Line on the Customer's next monthly invoice, whichever is the greater.
- 11.9 Charges are payable by Direct Debit, unless agreed otherwise with Panther. If a Customer cancels an active Direct Debit without Panther's consent, administrative charges, as set out in the Price List, may apply. Panther will apply a charge for payment by cheque, as set out in the Price List.
- 11.10 The Customer must pay all Charges in accordance with their direct debit authority, or if, for some reason, their direct debit payment fails, in accordance with the time for payment detailed in the invoice. The Customer must pay all deposits when Panther asks for them.
- 11.11 If the Customer's payment is rejected, or becomes, or is, invalid or unavailable, thereby preventing Panther from recovering the sums due under a Customer's account within 4 (four) days following the due date for payment, Panther reserves the right immediately to withdraw access to the Services. The Customer will also be charged an administration fee as detailed in the Price List. In these circumstances, the Customer will be sent a letter giving 7 (seven) days in which to arrange for their account to be discharged in full.
- 11.12 If, in response to Panther's letter, the Customer provides Panther with valid payment details so as to enable Panther to collect the sums due on their account, Panther will re-apply for payment. If the Customer's proposed payment method is still rejected, invalid or unavailable, or if the Customer's account remains outstanding for any other reason, 15 (fifteen) days after the original due date for payment, then (i) the Customer will be charged a further administration fee (as detailed in the Price List) together with a fee for the submission of a further warning letter (again as detailed in the Price List), and (ii) a letter will be sent requesting the discharge of the Customer's account in full, and/or for appropriate arrangements to be made with Panther for the Customer's account to be discharged, which must be effected within 7 (seven) days from the date of the letter, failing which we reserve the right to refer the outstanding account to Panther's credit control department.
- 11.13 If the Customer's account remains unpaid for a period of 30 (thirty) days after the original due date for payment Panther reserves the right to demand payment of a security deposit of three times the average monthly invoice or payment in full for the first year before the Services are reinstated.
- 11.14 If the Customer's account remains unpaid for a period of 35 (thirty five) days after the original due date for payment, the Services will then be suspended and the Customer's account will be referred to Panther's credit control department for it to take the appropriate action to collect the outstanding sums.

- 11.15 If Panther are required to instruct their solicitors or other professional advisers to collect any outstanding sums on the Customer's account, the Customer will be responsible for, and Panther will look to the Customer to discharge, those costs that are incurred by Panther in taking such action.
- 11.16 The Customer must ensure that the account holder's name is the same as the name on the payment details that are provided.
- 11.17 Panther may amend the Charges at any time. Panther will notify the Customer in writing at least 14 (fourteen) days before any increase in the Charges takes place. If the Customer does not accept the proposed increase in the Charges, the Customer must notify Panther within 14 (fourteen) days of receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed increase.
- 11.18 If the Customer has agreed to an Annual Minimum Call Spend (as notified to the Customer by Panther on entering into this Agreement), and at the end of any given year (beginning on the Commencement Date and / or Switchover Date or any anniversary thereof), the Customer has not incurred the Annual Minimum Call Spend, or if the Customer terminates this Agreement other than in respect of termination by the Customer pursuant to clause 15.2, prior to the end of any given year (beginning on the Commencement Date and / or Switchover Date or any anniversary thereof), the Customer will be liable to pay 25% of the difference between the Charges incurred during that year and the Annual Minimum Call Spend.

12. The Customer's Obligations

- 12.1 The Customer may only connect phones, extension wiring, sockets or other equipment to the Network using a Main Telephone Socket that Panther or the Network Operator have fitted unless the Parties agree otherwise.
- 12.2 The Equipment must only be used with the Network in a way that meets the Relevant Standards, is technically compatible with the Service and complies with the terms under which Panther or the Network Operator was granted Authorisation. If the Equipment does not meet the Relevant Standards, the Customer must immediately disconnect it, or allow Panther to do so at the Customer's expense. If the Customer asks Panther to test the Equipment to make sure that it meets the Relevant Standards, Panther may make a charge for doing so.
- 12.3 Panther may have to place equipment on the Premises to provide the Service. Panther requires a suitable place and safe conditions for this equipment. If Panther has to supply equipment that needs a continuous mains electricity supply and connection points, the Customer is responsible for providing this at its own expense.
- 12.4 The Customer must prepare the Premises for any installation of the Service to be carried out by Panther prior to arrival according to any reasonable instructions that Panther may give to the Customer. When the work is completed, Panther will not be responsible for putting back any items that had to be moved to allow the work to be carried out, nor for any re-decorating to the Premises that may be required.
- 12.5 The Customer is responsible for obtaining all relevant permissions for Panther to carry out any work necessary to provide the Service at the Premises.
- 12.6 Panther will comply with reasonable health and safety requirements notified to Panther at the Premises and the Customer shall comply with Panther's reasonable instructions to ensure a safe place for its engineers to carry out the work.
- 12.7 Nobody must tamper with Panther's equipment that is on the Premises. Other than fair wear and tear, if there is any damage to or loss of Panther's equipment (unless caused by Panther), the Customer must pay the charge in the Price List for any necessary repair or replacement.
- 12.8 The Customer must ensure the Service is not used:
 - a) to engage in conduct which amounts to improper or persistent misuse of a public telecommunications network or service within the meaning of Sections 127 to 128 of the Act;
 - b) to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
 - c) in a way that does not comply with the terms of any legislation or any codes or practice, regulations or any licence or authorisation applicable to the Company, Customer or End User (as appropriate) or that is in any way unlawful or fraudulent or to the knowledge of the Company or End User has any unlawful or fraudulent purpose or effect;

In the event that the Customer uses the Service in breach of this clause 12.8, Panther reserves the right to suspend the Service pursuant to clause 16. The Customer will fully reimburse Panther in respect of any sums Panther is obliged to pay to any third party, and any other costs incurred by Panther (including without limitation properly incurred legal fees), as a result of the Customer's misuse of the Services in breach of this clause 12.8.
- 12.9 The Customer must inform Panther if they are moving Premises so that Panther can arrange the transfer of the Customer's line(s). If Panther are requested to move the line(s) Panther will also, unless otherwise requested, endeavour to retain the Customer's existing telephone number. If Panther can transfer the Customer's existing number(s) to the new Premises the existing Agreement will continue under the same terms and conditions. If Panther cannot transfer the Customer's existing number(s) to the new Premises, or installation of a new line(s) will be required at the new Premises, or if the Customer requires any additional new lines, then new line connection charges will be incurred and a new Agreement must be entered into.
- 12.10 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.
- 12.11 The Customer is expressly prohibited from reselling any of the Services provided by Panther to any other User or third party.

13. Liability

- 13.1 Panther's liability under this Agreement for a failure in provision of the Service or the Services itself is detailed in this clause 13.
- 13.2 Nothing in this Agreement shall exclude or restrict either Party's liability for fraud, death or personal injury resulting from that Party's negligence.

- 13.3 Neither party shall be liable to the other under or in connection with this Agreement, whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), and in breach of statutory duty or otherwise for:
- a) any loss of business, contracts, profits, anticipated savings, goodwill, wasted management time or revenue;
 - b) any loss or corruption of data;
 - c) any indirect, special or consequential loss whatsoever incurred by either party,
- whether or not the party relying on this clause 13.3 was advised in advance of the possibility of any such loss
- 13.3 Panther cannot guarantee that the Services will operate Fault free as other third party companies may provide the Network or Service. This is beyond Panther's reasonable control and Panther is not therefore liable for Faults or losses suffered due to these matters. However, Panther accepts liability, as follows, subject to the limitations in clauses 13.2, 13.4 and 13.5: -
- a) in respect of its failure to report a Fault which has been notified to Panther by the Customer, to the Network Operator or third party operator as soon as reasonably practicable; or
 - b) for any actual loss or damage suffered by the Customer which was reasonably foreseeable or unforeseeable.
- For the avoidance of doubt Panther shall not be liable for any delay in the repair of the Fault except to the extent that Panther delays or fails to report the fault (as notified to Panther by the Customer under clause 10 to the Network Operator or third party operator as soon as reasonably practicable.
- 13.4 Subject to clause 13.3 above, Panther's total liability to the Customer (in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss or damage howsoever arising shall not exceed the lesser of £100,000 (one hundred thousand pounds) or the Charges due to Panther in the previous 12 (twelve) month period.
- 13.5 Except as set out expressly in this Agreement, all conditions, warranties, undertakings and obligations implied by statute, common law, custom, trade, usage or otherwise are excluded to the extent permissible in law.
- 13.6 Nothing in this clause 13 will exclude liability, which one Party would otherwise have to the other Party in respect of any statements made fraudulently.
- 13.7 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 13.8 Panther does not accept liability for the acts or omissions of other providers of telecommunication services (including for the avoidance of doubt the Network Operator) unless such other providers have been specifically engaged by Panther as subcontractors or assignees in respect of performing Panther's obligations under this Agreement.

14. Force Majeure

- 14.1 Panther will not be liable for failure to comply with its obligations as set out in this Agreement due to matters beyond its reasonable control including but not limited to lightning, flood, or exceptionally severe weather, fire or explosion, terrorism, civil disorder, riot, war, or military operations, national or local emergency, anything done by government or other competent authority or industrial disputes of any kind or in respect of any acts or omissions of OFCOM or any other Public Electronic Communications Network Providers as defined in the Communications Act 2003.

15. Termination of this Agreement

- 15.1 Panther or the Customer may terminate this Agreement at any time upon giving the other one-month's prior written notice of its intention to terminate this Agreement. Termination of the agreement by the customer prior to the expiry of the Minimum Term will incur Early Termination Charges as detailed in clauses 15.4 and 15.5.
- 15.2 The Customer may terminate this Agreement by written notice to Panther, if Panther is in material breach of its terms and fails to remedy such breach within 30 days of receiving notice from the Customer requiring such breach to be remedied; or if the Customer does not accept any proposed increase in the Charges notified to it by Panther pursuant to clause 11.16, provided that the Customer notifies Panther of its intention to terminate this Agreement within 14 days of receiving notification of the proposed increase pursuant to clause 11.16.
- 15.3 In the event that the Customer cancels a signed Order whilst any Equipment and/or Services are in the process of being provided and/or supplied, the Customer shall be liable for the charges for the Equipment and/or Services already provided and/or supplied as detailed in the Order. Examples of such Equipment and/or Services include, but are not limited to, hardware, software, telephony licences (including hosted telephony), cabling, pre-configuration labour and network installation charges. On payment to Panther of such Charges, title to the Equipment shall pass to the Customer.
- 15.4 In the event that the Customer terminates this Agreement prior to expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clause 15.2, the Customer shall pay the Early Termination Charges, calculated in accordance with clause 15.5.
- 15.5 The Early Termination Charges shall be, for each Service that a Customer cancels: -
- a) the sum of the Charges payable by the Customer from the date of actual termination until the date of the first anniversary of the Commencement Date; and
 - b) 20% of the Rental charges payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
 - c) any actual Call Charges accrued up to and including the date of termination
- 15.6 In the event that Panther terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by Panther pursuant to clauses 16.1 d), or 16.1 e), the Customer shall pay the Charges up to the end of the notice period.

- 15.7 In the event that the Customer terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clause 15.2, the Customer shall pay the Charges up to the end of the notice period in accordance with clause 15.1 or until 30 (thirty) days from the date the notice is received by Panther whichever is the later.
- 15.8 If this Agreement ends, Panther will refund any money owed to the Customer, after first deducting any money the Customer owes to Panther under this Agreement or any other agreement Panther has with the Customer.
- 15.9 In the event that the Customer terminates any service prior to expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clauses 15.2, 15.3 and 15.4, Panther shall be entitled to charge the Customer such an amount as would be reasonable in covering Panther's losses as a result of such a termination. This would include *inter alia* instances where Panther has provided free line installations to the Customer that have been subsequently cancelled prior to the expiry of their minimum term.

16. Suspension or termination of the Service for breach

- 16.1 Panther reserves the right to suspend the Service or terminate this Agreement immediately at any time without giving the Customer prior notice, and without prejudice to Panther's other rights and remedies, if:
- a) the Customer breaches this Agreement or any other agreement it has with Panther for telecom Services and fails to remedy the breach within 14 (fourteen) days of Panther notifying the Customer of such breach and requesting that such breach is remedied;
 - b) Panther believes that the Service is being used in breach of clauses 4.2 or 12.8, whether the Customer is aware of such misuse or not;
 - c) the Customer, being an individual, partnership or firm has entered into any composition or arrangement with its creditors, has a petition presented by it or by any other person for its bankruptcy or has a bankruptcy order made against it; or, being a company, is subject to any winding up or administration proceedings, or in any event ceases, or threatens to cease to trade;
 - d) Panther's Authorisation (or the Authorisation of any relevant third party telecommunications supplier or regulator) expires or is revoked or modified in any respect which materially or adversely affects Panther's ability to provide the Services; or
 - e) if Panther have to do so to comply with any order, instruction or request of any authorised government body or authority or any emergency service; or
 - f) any direct debit details submitted by the Customer for payment are found not to be or cease to be valid; or
 - g) Panther are directed by any competent authority to cease the provision of the Services or any part of it; or
 - h) Panther's contract with any third party who assists Panther in providing the Services to the Customer is terminated.
- 16.2 If an agreed Average Call Spend is reached before the next monthly invoice is sent, Panther may inform the Customer of the amount the Customer has spent and agree any necessary action. If the Customer has a limited payment history for the Service (being less than three invoices received and paid in full) Panther reserves the right to restrict the Customer's ability to make outgoing Calls pending payment of charges accrued on Panther's invoicing system.
- 16.3 If Panther suspends the Service pursuant to this clause 16 (other than pursuant to clauses 16.1 d) and e)), Panther will not be obliged to recommence provision of the Service until the Customer does what it is obliged to do under and in accordance with the terms of this Agreement or satisfies Panther that the Service will not be used in a way that is in breach of this Agreement.
- 16.4 The Customer is still liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clauses 16.1 d) or e)).
- 16.5 In the event the Service is suspended by Panther for reasons as set out in clause 16.1 c) above, Panther reserves the right to charge the Customer an administration fee of £50 payable by the Customer within 14 (fourteen) days of the Service being suspended by Panther.
- 16.6 In the event the Service is recommenced following suspension, Panther reserves the right to charge a reconnection fee of **£25** plus VAT for each suspended Line.

17. Validity

- 17.1 If any provision of this Agreement becomes invalid or unenforceable the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

18. Disputes

- 18.1 If the Customer has a complaint or query regarding any aspect of the Service, the Customer should contact Panther at the address given in clause 22.
- 18.2 If Panther cannot resolve any dispute with the Customer after a 12 (twelve) week period, either Party can refer the dispute to the Telecoms Ombudsman at www.otelo.org.uk or on 0845 050 1614 or to OFCOM, the communications regulator at www.ofcom.org.uk or call OFCOM on 0845 456 3000 for resolution.
- 18.3 Nothing in this clause 18 will prevent either Party from:
- a) seeking injunctive relief in the case of any breach or threatened breach by the other Party;
 - b) commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
 - c) commencing proceedings in the case of non-payment of the Charges.

- 19. Changing this Agreement**
- 19.1 If the Customer asks Panther to make any change or changes to the Service Panther may ask the Customer to confirm its request in writing. If Panther agrees to a change, this Agreement will be changed when Panther confirms the change to the Customer in writing.
- 19.2 Panther can change the conditions of this Agreement including its Charges at any time. Panther will notify the Customer in writing at least 14 (fourteen) days before the changes takes place.
- 20. Assignment**
- 20.1 Panther shall have the right to assign or otherwise delegate all or any of its rights and obligations under this Agreement to any Associated Company third party.
- 20.2 The Customer cannot assign or try to assign this Agreement or any part of it to a third party without Panther's prior written consent.
- 21. Intellectual Property Rights**
- 21.1 All Intellectual Property Rights in the Services shall be owned by Panther and its Service Providers save to the extent that any of the same contain Intellectual Property Rights owned by third parties.
- 22. Notices**
- 22.1 Any notice given under this Agreement must be delivered by hand, sent by email or sent by prepaid post as follows:
- a) to Panther at Devonshire House, Manor Way, Borehamwood, Herts, WD6 1QQ or such other address as may be notified to the Customer; or
- b) to the Customer at the address to which the Customer has asked Panther to send invoices.
- 23. Confidential Information**
- 23.1 The parties will at all times keep confidential all Confidential Information acquired in consequence of this Agreement, except for information which they are bound to disclose by law, or they are required to disclose by regulatory agencies or information given to their professional advisers where reasonably necessary for the performance of their professional services.
- 23.2 The obligations of confidentiality set out in this clause 23 will remain in full force and effect despite termination of this Agreement for a period of 2 (two) years
- 24. Entire Agreement Clause**
- 24.1 This Agreement constitutes the entire agreement between Panther and the Customer and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the Services.
- 24.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.
- 25. Third Party Rights**
- 25.1 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 26. Waiver**
- 26.1 The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.
- 27. Law and Jurisdiction**
- 27.1 This Agreement or any term of this Agreement will be governed by English law and the English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

Schedule A

Telephone Services

1. Charges

- 1.1 Panther will calculate the Call Charges using the details recorded by the Network Operator. Call Charges will normally be invoiced monthly in arrears. Where possible, Call Charges will appear on the Customer's next invoice, but sometimes there may be a delay.

2. The Phone Book and Directory Entries

- 2.1 Panther Telecom Ltd will enter the Customer's name, address and the phone number for the service in the phone book for the Customer's area and make the phone number available from a directory enquiries service unless the Customer requests Panther Telecom Ltd not to do so within 14 (fourteen) days of entering into this Agreement.
- 2.2 If the Customer requires a Special Entry in any phone book issued by the Network Operator it must let Panther Telecom Ltd know. Where Panther Telecom Ltd agrees to a Special Entry the Customer may be required to pay an additional charge and sign a separate agreement for that entry.

3. Faults

- 3.1 If there is a fault the Customer must report this directly to Panther Telecom Ltd.
- 3.2 If the Customer reports a fault in respect of a Line, Panther Telecom Ltd will report the fault to the Network Operator as soon as reasonably practicable. Engineering response times to faults will vary depending on the level of maintenance cover on the Line in question. Levels of cover and response times are detailed in the Price List.
- 3.3 Panther Telecom Ltd will not be responsible for any Faults in respect of any Customer who does not pay Line Rental pursuant to this Agreement.

Schedule B

Internet Access

1. Services

- 1.2 Panther may at any time make any changes to the Services supplied as it deems necessary provided always that:
- a) Panther shall provide to the Customer as much notice as practicable prior to any such change taking effect (having due regard to the likely impact on the Client and the nature of such change); and
 - b) If any such change has a detrimental and material effect on the nature or quality of the Services (as evidenced in writing by the Customer) then within 30 (thirty) days of the change being implemented the Customer shall have the right to terminate this Agreement by giving Panther not less than 30 (thirty) days notice in writing

2. Use of the Services

- 2.1 The Customer agrees that all Users, and shall procure that all Additional Users, be authenticated and where required be provided with a unique user name and password in order to access any part of the Service.
- 2.2 The Customer shall not itself or knowingly permit any User to use the Services to do any of the following:
- a) Publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
 - b) Threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
 - c) Engage in illegal or unlawful activities through the Network;
 - d) Knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer, the User or Additional User (as appropriate);
 - e) Knowingly make available or upload files that contain a virus or corrupt data;
 - f) Falsify the true ownership of software or other material or information contained in a file that the Customer, any User or Additional User makes available via the Network;
 - g) Act in a manner which utilises excessive amounts of bandwidth;
 - h) "Spam" or otherwise deliberately abuse any part of the Network;
 - i) Breach the rights of third parties
 - j) Obtain access, through whatever means, to notified restricted areas of the Network;
 - k) Act in a manner which restricts or inhibits any other User from using or enjoying the Network Operator's products or services
- 2.3 If the Customer becomes aware that any User or Additional User is using the Network to perform any of the activities listed in clause 2.2 it shall enforce the applicable terms in its agreement with its User and shall use all best endeavours to stop such User from doing so. In the event that Panther becomes aware that a User or any Additional User is performing any of the activities listed in clause 2.2 Panther shall bring the breach to the attention of the Customer in writing. The Customer is required, within 1 (one) business day of dispatch of such message, to provide a satisfactory response detailing the actions that have been taken to stop a User or Additional User performing in this way. If such response is not forthcoming Panther reserve the right to restrict the access of and/or disconnect the User or Additional User in question, and if necessary the entire Service. If Panther exercises its rights to disconnect a User or Additional User it will notify the Customer as soon as reasonably practicable.
- 2.4 Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of the Network by a User or Additional User.

3. Faults

- 3.1 Panther shall not be liable for any fault or defect in the Services due to items of hardware or software provided by the Customer, and the Customer shall be liable for any charges incurred by Panther in dealing with any problems with the Service due to any such items.
- 3.2 If there is a fault the Customer must report this directly to Panther Telecom Ltd.
- 3.3 The Customer shall provide a complete description of the fault and any reasonable information requested by Panther.
- 3.4 On receipt of a fault report Panther will report the same to the Network Operator as soon as reasonably practicable, and normally within 1 (one) hour.
- 3.5 Panther shall use all reasonable endeavours to resolve faults within the following timescales, measured from the time the fault is logged with the Network Operator:
- a) Priority 1 (Service is unavailable to multiple Customers); resolution within 6 (six) hours, plus an additional 4 (four) hours if hardware support is required.
 - b) Priority 2 (Service is unavailable to a single User or Additional User); resolution within 40 (forty) clock hours
 - c) Priority 3 (Service fails to in a non-material way to meet the availability level set out in clause 4 below); resolution within 2 (two) working days
- 3.6 Panther Telecom Ltd will not be responsible for any Faults in respect of any Customer who does not pay for the Services

pursuant to this Agreement.

4. Availability

- 4.1 Panther will aim to provide a weekly average overall network availability of not less than 99.5%.
- 4.2 Planned Maintenance will not exceed 2 hours in total in any calendar month.
- 4.3 Emergency Maintenance will not exceed 2 hours in total in any calendar month

5. Suspension of the Service

- 5.1 Panther may suspend or block the Customer's (or any User's or Additional User's) access to the Service in the following circumstances:
 - a) If Panther or any third party providing Equipment or Services to Panther in connection with the provision of the Services is required to do so in order to comply with any law, regulation, court order, or request, order, direction, determination or consent by or of a governmental or regulatory body or authority;
 - b) If Panther is unable to obtain for any reason the relevant Services or equivalent from its suppliers, thereby preventing Panther from performing its obligations under this Agreement;
 - c) If Panther or any third party providing Equipment or Services to Panther in connection with the provision of the services requires to carry out any emergency maintenance or repair, which will include any necessary action to prevent interference with, damage to or degradation of the Network. Where possible Panther will give the Customer a minimum of 48 (forty eight) hours advance notice of such;
 - e) To carry out planned maintenance or upgrade the Network or the Services, in which case Panther will provide not less than 48 (forty eight) hours prior notice of the suspension and, where practicable, will agree with the Customer when the Services will be suspended and for how long;
 - f) If the Customer fails to comply with any of its obligations set out in this Agreement or if Panther has reasonable grounds to believe that the conduct of the Customer is likely to place it in breach of any such obligation;
- 5.2 Panther will provide the Customer with as much notice of any suspension to the Service as reasonably possible, and the Customer acknowledges that on occasions no notice may be possible.
- 5.3 Panther will restore suspended Services as soon as reasonably practicable after the cause of the suspension has been rectified.
- 5.4 If the suspension of Services arises out of, or in connection with, an act or omission of the Customer, then the Customer will pay to Panther all reasonable costs that Panther incurs in reconnecting the Services.
- 5.5 Panther may require the Customer (by notice in writing) to withdraw provision of the Services from a User or an Additional User where such User or Additional User is in breach of the provisions contained in clause 2.
- 5.6 Any withdrawal or suspension of services under this clause 6 will not amount to a suspension of any other Services to the Customer nor a termination (in whole or in part) of this Agreement.

6. Maintenance

- 6.1 Panther undertakes to advise the Customer as soon as reasonably practicable of any time periods for conducting routine maintenance or upgrades to the Equipment and/or the Network. Panther shall use its reasonable endeavours to carry out such routine maintenance or upgrading during such times as the traffic over the Network is at its lowest.
- 6.2 Panther shall be free to carry out emergency or urgent maintenance to the Equipment and/or the Network at any time to ensure the Services continue to be supplied. Wherever reasonably possible, any emergency or urgent maintenance will be carried out during such times as the traffic over the Network is at its lowest. Panther shall advise the Customer, if practicable, prior to the conducting of any such emergency or urgent maintenance.