



Equipment Sale and Maintenance Service Schedule: Sale and Support of BT Provided Equipment and Maintenance of Customer Equipment

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These Equipment Sale and Support, and Maintenance Service specific terms and conditions, consisting of this cover page and the attached terms and conditions, constitute a Service Schedule to the Products & Services Agreement ("PSA") between BT Communications Ireland Limited and the Customer. The Service Schedule and references to the Service Schedule shall be deemed to include the terms and conditions of the PSA. In the event of conflict between the General Terms and Conditions and this Service Schedule, the order of priority shall be as stated in the PSA.

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Sale and Support of BT Provided Equipment and the Support of Customer Equipment Service Schedule

SERVICES REQUIRED:		
Section A – Sale of Equipment A1: Staging of Equipment A2: Installation of Equipment	Yes/No Yes/No Yes/No	
Section B – Equipment Maintenance B1: BT Maintenance B2: SMARTnet	Yes/No Yes/No Yes/No	
Both Section A and Section B	Yes/No	

Sale and Support of BT Provided Equipment and the Support of Customer Equipment Service Schedule

SECTION A – SALE, STAGING, INSTALLATION OF BT PROVIDED EQUIPMENT

Definitions

The following definitions apply where appropriate in addition to those in other parts of the PSA.

“BT Provided Equipment” means any equipment provided to the Customer by BT, whether by sale or otherwise.

“Cisco Equipment” means BT Provided Equipment or software manufactured by Cisco Limited and provided under the Service Schedule

“DDU” means Delivered Duty Unpaid

“EFTA” means European Free Trade Area

“Equipment Manufacturer” means the manufacturer of the BT Provided Equipment.

“EU” means European Union

“Normal Working Hours” means 0900-1700 Monday to Friday inclusive (excluding Public and Bank Holidays).

“Order” means where the Customer has placed an order with BT which BT has accepted.

“Order Form” means the document describing the Equipment and/or Services to be purchased by the Customer, and the charges in respect of same.

“Territory” means Republic of Ireland

“Warranty” means the applicable level of support provided following delivery of BT Provided Equipment.

“Minimum Period” means the period specified on the Order for the provision of any Fault Repair service option.

SECTION A1: Sale of BT Provided Equipment

1. Sale of BT Provided Equipment

- 1.1. BT will sell BT Provided Equipment to the Customer as set out in the Order Form.
- 1.2. BT will supply the Services described in this Schedule for BT Provided or Customer Equipment. The Services are provided for the Customer's own use.
- 1.3. The Customer is responsible for making sure the equipment is suitable for its own needs, unless BT has provided written advice to say so.

2. Delivery of BT Provided Equipment

- 2.1. BT will use its reasonable endeavours to deliver the BT Provided Equipment by the date(s) agreed with the Customer but all dates are estimates and BT has no liability if it does not meet the date(s).

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- 2.2. BT Provided Equipment will be delivered in the Equipment Manufacturer's original wrapping (unless it has been staged) to the Customer at:
- 2.2.1. the delivery address on the Order if same is within the Territory or the EU/EFTA.
 - 2.2.2. the applicable port of entry in the delivery country, in which case the BT Provided Equipment will be supplied DDU (INCO terms 2000), as modified by the express provisions of this Annex. The Customer will act as the importer of record and BT will be the exporter of record. The Customer must clear the BT Provided Equipment through the applicable customs authority in the destination country and shall be liable for any import tax, duty and/or excise duty incurred. It should be noted that this may create a taxable presence for the Customer and BT recommends that the Customer obtains independent international tax and trade advice regarding this matter.
- 2.3. It may be possible for BT to arrange shipping services to deliver the BT Provided Equipment to the final destination address(es) specified in the Order if the Territory and/or the delivery address(es) are outside the EU/EFTA. BT will provide end-to-end delivery services to the delivery destination address(es) except that the Customer will
- a) perform any import clearance tasks that the law of the applicable country requires it to
 - b) pay import duty and other charges in accordance with DDU (INCO Terms 2000) to BT (or the relevant person if BT cannot lawfully pay on behalf of the Customer)
 - c) if requested by BT, provide authorisation as soon as practicable authorising BT or its agent, to carry out its obligations as shipping agent. Any such authorisation shall be as narrow as is required for the fulfilment of the task. If the Customer cannot give such authorisation, it will undertake those tasks itself at its own cost.
- 2.4. BT may, at its sole discretion, assign the supply of BT Provided Equipment outside the Territory to another BT entity and/or third party, to provide and invoice for. Notwithstanding any other provisions of this Annex or the PSA, the Customer hereby agrees to any such assignment.

3. Acceptance of BT Provided Equipment

- 3.1. Acceptance of the BT Provided Equipment will take place on signature for the delivery as follows:
- 3.1.1. At the delivery address(es) if the Territory and/or delivery address(es) are within the EU / EFTA); or
 - 3.1.2. In all other cases, at the port of entry, or at the final delivery address(es) that BT has agreed with the Customer if BT is shipping the BT Provided Equipment as described in section 2.4.

4. Risk and Ownership

- 4.1. If BT Provided Equipment is supplied in the Territory then title in the BT Provided Equipment, excluding the licensed Software, will pass to the Customer on payment in full of all monies due.

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Until BT receives payment in full, the BT Provided Equipment must appear in the Customer's books in the name of BT. In this regard, if there is a threatened seizure of the BT Provided Equipment, or anything listed in the Termination Clause of the General Terms and Conditions applies to the Customer, the Customer must immediately:

- a) notify BT so that BT may take action to repossess the BT Provided Equipment; and
 - b) notify interested third parties of BT's ownership of the BT Provided Equipment.
- 4.2. For BT Provided Equipment to be supplied outside the Territory risk and title in the BT Provided Equipment, excluding the licensed Software, will pass to the Customer on despatch from the final shipping point in the Territory, but the Customer will not be liable for any loss or damage to the extent that it is caused by BT's negligence.
- 4.3. After payment in full, and where relevant, the Customer will be granted a non-exclusive, non-transferable license from the Equipment Manufacturer to use the Software.

5. BT Provided Equipment Warranty

- 5.1. If during the period of any relevant Warranty (as specified in the Order or as notified to the Customer by BT) BT is notified of a fault in BT Provided Equipment which is due to faulty design, manufacture or materials, or the negligence of BT, BT will, replace or (at its option) repair the faulty part or in the case of new wiring provided by BT, restore it to effective use free of charge provided that:
- a) the BT Provided Equipment has been properly kept, used and maintained in accordance with the Equipment Manufacturer's or BT's instructions, if any, and has not been modified except with BT's consent;
 - b) the fault is not due to accidental or wilful damage (including lightning and electrical damage); interference with or maintenance by anyone except BT, BT's agents or subcontractors;
 - c) the fault is not due to faulty design by the Customer if the BT Provided Equipment has been manufactured to the Customer's design.
- 5.2. This warranty does not cover fair wear and tear.
- 5.3. If the Customer agrees to install the replacement BT Provided Equipment, the Customer must return the faulty BT Provided Equipment to BT unless BT specifies otherwise.
- 5.4. BT does not warrant that the embedded software supplied with the Service will be free of all faults or that its use will be uninterrupted. BT will remedy any defects which significantly impair performance within a reasonable time, upon notification of the issue to BT by the Customer as part of a Maintenance Contract.
- 5.5. BT may make minor alterations to the specification of BT Provided Equipment which does not affect Equipment's performance.
- 5.6. Notwithstanding the provisions of this section 5, if the Customer orders a Maintenance Service from BT for the BT Provided Equipment, then this warranty shall be superseded by the applicable Maintenance Service.

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- 5.7. For BT Provided Equipment, any warranty, statement or promise other than the Equipment Manufacturer's warranty regarding the BT Provided Equipment is only valid if given in writing by BT.
- 5.8. The BT Provided Equipment Manufacturer's warranty, can be found on the manufacturers website.

6. The Customer's Responsibilities

- 6.1. The Customer is responsible for the maintenance of the BT Provided Equipment except as provided for in the Equipment Manufacturer's warranty or if the Customer has ordered Maintenance Services pursuant to this Service Schedule.
- 6.2. The Customer agrees:
- 6.2.1. to care for and use the BT Provided Equipment in accordance with BT and/or the manufacturer's instructions and to use it only for a purpose for which it is designed;
 - 6.2.2. not to repair, adjust, or modify the BT Provided Equipment without BT's written consent except for configuration changes made in accordance with the equipment manufacturer's documentation. The Customer must notify BT of any such configuration changes; and
 - 6.2.3. to co-operate in diagnosing faults by performing any diagnostic and test routines requested by BT or included in the manufacturer's instructions, and allowing BT to carry out remote diagnostic tests, where appropriate.
- 6.3. Where the Customer is importer of record for the BT Provided Equipment, the Customer is responsible for and must comply with destination country laws and regulations, including any trade and legal restrictions applicable to the BT Provided Equipment.

7. Charges and Payment Terms

- 7.1. Delivery is completed within Normal Working Hours Day, and the Customer will be liable for any additional charges for delivery outside of Normal Working House.
- 7.2. Cancellation Charges
- 7.2.1. If the Customer cancels an Order before delivery, then (depending on the time of cancellation) BT reserves the right to charge cancellation fees which may include (without limitation) charges for:
 - a) order processing and management;
 - b) equipment returns; and/or
 - c) the total charge for the BT Provided Equipment and associated licence fees.BT will use reasonable endeavours to keep such charges to a minimum.
 - 7.2.2. Notwithstanding the provisions of this section 7.2, BT will not accept cancellation from the Customer for BT Provided Equipment that has been delivered or is in the process of being shipped by the Equipment

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Manufacturer. In such event the Customer shall be liable for the full charge(s) specified on the Order for the BT Provided Equipment.

- 7.2.3. If the Customer cancels an Order, BT shall be entitled to recover any relevant BT Provided Equipment after giving written notice in accordance with the General Terms and Conditions of the Master Services Agreement.
- 7.3. If the Customer delays or prevents the delivery of the BT Provided Equipment, BT may apply reasonable additional charges for any costs that it incurs.

8. Intellectual Property in BT Provided Equipment

- 8.1. In addition to the provisions of the General Terms and Conditions the Customer will keep the embedded software, any operating manuals and any other documentation provided confidential, and will not disclose them other than to its employees, agents or contractors who need to use them to operate the BT Provided Equipment. The Customer will ensure that such employees, agents and contractors abide by the provisions of this section 8.
- 8.2. The licence granted to the Customer shall be for the use of the Software in object code form only, and solely as provided for in the Equipment Manufacturer's warranty and software licence.
- 8.3. The Customer shall contact the Equipment Manufacturer directly and promptly (and shall notify BT, copying any correspondence to BT), in the event of any breach or potential breach of the Software Licence.

9. Waste Electrical or Electronic Equipment (WEEE)

- 9.1. A crossed-out wheelie bin symbol shown on the BT Provided Equipment means that the BT Provided Equipment is classed as Electrical or Electronic Equipment (EEE) under the European Parliament and Council Directive 2002/96/EC on Waste Electrical and Electronic Equipment, and the measures implementing this Directive in European Union Member States (the WEEE Directive). For the purposes of the WEEE Directive any EEE sold to the Customer under this Annex is classed as Business to Business (B2B) EEE.
- 9.2. The Customer and BT acknowledge that for the purposes of Article 9 of the WEEE Directive this paragraph shall be an agreement stipulating other financial arrangements for the environmentally sound management of WEEE. When the Customer has no further use for the BT Provided Equipment the Customer shall ensure that the BT Provided Equipment is not mixed with other commercial or household waste on disposal. The Customer is entitled to return to BT on a one for one basis any equivalent electronic and electrical equipment which is being replaced with new BT Provided Equipment as part of the Service. If returned to BT, the Customer shall arrange for and pay for the collection of same and BT shall be entitled to charge a return fee to arrange for the disposal of the WEEE in accordance with its obligations of either a producer or distributor (whichever the case maybe) in the WEEE Regulations.
- 9.3. If the Customer elects to dispose of the WEEE itself, the Customer acknowledges: (a) that it will do so at its sole cost and relieve BT of all responsibilities due to improper disposal of the waste product; (b) if BT is the "Producer" for the purposes of the WEEE Directive, BT shall upon written request from the Customer and without cost or charge to the Customer provide all information and data on any dangerous substance or preparation or hazardous substance contained in the product; (c) the Customer shall take on the obligations in the WEEE Directive for the sound environmental management of WEEE and hence the Customer shall be responsible for such information recording or

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reporting obligations imposed by the WEEE Directive and the measures implementing it in EU Member States; (d) the Customer shall ensure that the WEEE is treated in accordance with the requirements of Article 6 of the WEEE Directive; and (e) the Customer will become responsible for achieving the recovery and recycling targets stipulated in Article 7 of WEEE Directive.

SECTION A2: Staging of BT Provided Equipment

1. The Customer may order Staging for BT Provided Equipment and the details of such order are as set out in the Order Form. The standard Staging Service comprises:
 - a) Logistics (delivery of the equipment to BT from the manufacturer and tracking until dispatched to the Customer)
 - b) Hardware configuration (BT will install any plug-in modules in the equipment chassis)
 - c) Software load (installation and amendment of certain software elements as ordered by the Customer in the Order)
 - d) Power-up Test (powering up and self test to confirm the operational status of the equipment).

In addition to the standard staging service the Customer may order any of the following chargeable options:

- a) Soak Test 24hour (the equipment is left on after power up and self-test for 24hours, after which BT will confirm that no test failures occurred).
 - b) Port Connection and Test (each port on the equipment is individually tested, results recorded and provided to the Customer on Delivery).
 - c) Asset Tagging (Customer provided bar code tags will be applied to the built equipment chassis and provide documentation associating the bar codes with the chassis serial number).
 - d) Network Set-up and Test (this is defined and agreed between BT and the Customer and subject to the terms of the Professional Services Schedule)
 - e) Cabinet/Rack Build (the individual chassis products are incorporated into a Customer provided rack, including the installation of power rails and "dressing" all associated shelving and cabling).
2. If the Staging Service is required outside the Territory or outside EU/EFTA then BT will assign provision of the relevant Staging Service to a local BT entity and/or third party (where available, and subject to regulatory requirements), otherwise the Customer will agree to be invoiced outside the country of performance. Notwithstanding any other provisions of this Annex or the General Terms and Conditions, the Customer hereby agrees to any assignment by BT to a local BT entity and/or third party in accordance with this section.
3. All Charges for Staging Services are set out in the Order.

SECTION A3: Installation of BT Provided Equipment

1. The Customer may order Installation for BT Provided Equipment and the details of such order are as set out in the Order Form.

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2. Following installation BT will test the BT Provided Equipment to ensure that it is ready for use. Acceptance of the BT Provided Equipment by the Customer will take place on the earlier of:
 - a) the date when BT notifies the Customer that the BT Provided Equipment has passed BT's tests; or
 - b) the date when the Customer begins to use the BT Provided Equipment.
3. **Installation Warranty**
 - 3.1 If during the period of 30 days (or any other period notified to the Customer by BT) from Acceptance where BT has installed the BT Provided Equipment, BT is notified of a fault in the BT Provided Equipment which is due to faulty installation due to the negligence of BT, BT will where necessary by arrangement with the Equipment Manufacturer and/or the Customer, return or (at BT's option) repair the faulty part or in the case of new wiring restore it to effective use free of charge provided that:
 - a) the BT Provided Equipment has been properly kept, used and maintained in strict accordance with the Equipment Manufacturer's or BT's instructions, if any, and has not been modified except with BT's consent;
 - b) the fault is not due to accidental or wilful damage (including lighting and electrical damage); interference with or maintenance of BT Provided Equipment by persons other than BT;
 - c) if BT Provided Equipment has been manufactured to the Customer's design, the fault is not due to faulty design by the Customer.
 - 3.2 If BT visits a Site in response to a fault report and no fault is found, or the fault is not covered by the warranty, BT may raise an additional charge.
 - 3.3 Notwithstanding the provisions of this clause 3, in the event that the Customer enters into a Maintenance service with BT for BT Provided Equipment then this warranty shall be superseded and replaced by the terms and conditions of the Maintenance service.
4. BT will not sell an installation service performed in a country other than the Territory to the Customer in that country, unless that country is within the EU/EFTA. Rather BT will assign provision of the relevant installation service to a local BT entity and/or third party (where available, and subject to regulatory requirements), otherwise the Customer will agree to be invoiced outside the country of performance. Notwithstanding any other provisions of this Schedule or the General Terms and Conditions, the Customer hereby agrees to any assignment by BT to a local BT entity and/or third party in accordance with this clause.

SECTION B – EQUIPMENT MAINTENANCE

Definitions

The following definitions apply where appropriate in addition to those in other parts of the PSA:

“CPE (Customer Premises Equipment), Customer Equipment or Equipment” means any equipment owned by the Customer or a third party (to include third party financed equipment)

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which is maintained or managed by BT as part of the Service and which is located at a Site not owned or occupied by BT, including but not limited to terminal adapters, routers, bridges, firewalls, hubs, switches, servers, modems, concentrators, multiplexers, client adapters and access points.

“Custom Care” means a fault repair service tailored to meet the Customer's requirements as agreed between the parties.

“Customer Contact Point” means a single representative nominated by the Customer to liaise with BT on all matters in relation to the Service.

“Customer Information” means information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Customer website (directly or indirectly) by or on behalf of the Customer by using the Service

“Customer Network” means the Customer's private telecommunications network, comprising the lines and CPE configured so that traffic is delivered over the core network.

“Enhanced Care” means the provision by BT of supplementary professional services personnel for pre-defined numbers of days on an annual basis during the course of a contract.

“Equipment Survey” means an inspection carried out by BT on Equipment owned by a Customer, prior to taking over the Maintenance Service on the Customer Equipment.

“Failure of Service” means any failure of Service causing continuous loss of the ability to convey messages but does not include the loss of such ability arising directly or indirectly as a result of BT's suspension of Service under any provision of this Contract.

“LAN” means Local Area Network.

“Maintenance” or “Maintenance Service” means the maintenance Service provided by BT as described in the Order Form and this Section B.

“Maintenance Hours” means the hours applicable to the Maintenance Option chosen by the Customer as detailed in Section 3 herein.

“Minimum Period” means the period specified in the Order Form.

“Normal Working Hours” means 0900-1700 Monday to Friday inclusive (excluding Public and Bank Holidays).

“Operational Service Date” means the earlier of the date under this contract when the Service is first made available to the Customer at a Site or the date when the Customer first starts to use the Service, or should BT wish to inspect or test Equipment before accepting it for maintenance the Service will not begin until BT confirms that it has accepted the Equipment for maintenance.

“Order Form” means the document describing the Equipment and/or Services to be purchased by the Customer, and the charges in respect of same.

“Prompt Care” means a fault repair service as more fully described in Section B2 (1) herein.

“Service” means the service or, where appropriate, part of the service described in this Section B.

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“Supplied Equipment” means each item including any related software identified in the Contract as Supplied Equipment and provided by BT under this Contract.

“Spares” means replacement hardware which may be installed by BT in the event of a failure of Equipment for which BT has a maintenance contract.

“Standard Care” means a fault repair service as more fully described in Section B2 (1) herein.

“Total Care” means a fault repair Service as more fully described in Section B2 (1) herein.

“WAN” means wide area network.

“Wireless LAN” means the transmission of data over electromagnetic waves using CPE including access point and client adapter equipment

Section B1: General (BT Maintenance and SMARTnet Maintenance)

1. Scope of Service

- 1.1. BT will provide a Maintenance service if ordered by the Customer. The Service may be provided by BT or, by BT’s appointed maintainer. The Service is “reactive”, that is the equipment is not monitored by BT and BT will respond to faults reported by the Customer. The Service is available for BT Provided Equipment (although may not be available for all such equipment) and Customer Equipment which passes a BT Maintenance Inspection Test, in which BT determines the suitability of the equipment for the service.
- 1.2. BT will not sell a Maintenance service performed in a country other than the Territory to the Customer in that country, unless that country is within the EU/EFTA. Rather BT will assign provision of the relevant Fault Repair service to a local BT entity/third party (where available, and subject to regulatory requirements), otherwise the Customer will agree to be invoiced outside the country of performance. Notwithstanding any other provisions of this Annex or the General Terms and Conditions, the Customer hereby agrees to any assignment by BT to a local BT entity/third party in accordance with this clause.
- 1.3. The Customer may elect Maintenance Option 1 - one of the BT Maintenance Options (as set out in Section B2), or (where available) Maintenance Option 2 - Cisco SMARTnet Maintenance (as set out in Section B3).

2. Minimum Period of Service

- 2.1. The Minimum Period of Service of any Fault Repair service option selected by the Customer shall be stated on the Order Form and will commence on the Operational Service Date.
- 2.2. Following expiration of the Minimum Period of Service of any Fault Repair service option selected by the Customer, the Fault Repair service option shall continue in full force and effect until terminated by either Party, in accordance with the General Terms and Conditions of the Master Services Agreement.

3. Charges

- 3.1. Charging for the Fault Repair service shall begin on the Operational Service Date.
- 3.2. Charges for the Fault Repair services are set out in the Order Form.

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- 3.3. In respect of Maintenance Option 1 (as detailed in Section B2), the following additional Charging provisions shall apply:
- 3.3.1. Payment of one off charges is due on the Operational Service Date of the Site in question or on completion of the work to which the charges relate, as appropriate. Rental is normally payable in advance (although BT may on occasion bill the Customer in arrears) and usage charges, if applicable, will normally be billed in advance. All invoices for recurring charges will be submitted at the frequency detailed on the Order Form
- 3.3.2. BT reserves the right to apply reasonable additional charges for any costs it incurs if provision of the Service is delayed by the Customer or if performance of BT's obligations is made more difficult or costly as a result of some act or omission on the part of the Customer, including but not limited to denying BT access to the Sites or failing to fulfil its obligations under this Service Schedule.
- 3.3.3. It is acknowledged by the parties that this is a fixed price agreement for maintenance over the minimum contract term. Where the Equipment listing may change during the term with prior approval by the Customer, there will be no reduction in the fixed price contained within this contract without prior approval by BT. Should the Equipment list increase, BT will put in place an additional Maintenance contract with the customer for the support of that additional equipment.

4. Termination of the Fault Repair Service

Except as provided for in the Master Services Agreement, if the Customer terminates this Service Schedule, or if BT terminates Service for breach by the Customer, before the Minimum Period of Service has expired, then, in addition to all outstanding charges for Service rendered, the Customer agrees to pay the full amount outstanding which would have remained to be paid for the Services covered in this Schedule had the Service not been terminated in advance of the Minimum Period of Service. If the Customer terminates the Service as a result of BT breach, the Customer will not be liable for payment of termination charges.

5. Take Over Maintenance

- 5.1. All Service in respect of which BT is taking over the maintenance of Equipment which has not previously been maintained by BT shall be subject to an Equipment Survey, at no additional cost to the Customer. The Equipment Survey may only be waived if the Customer in advance provides a complete and accurate inventory of the Equipment to be maintained.
- 5.2. BT reserves the right to adjust the Price or withdraw the Maintenance Service based on the Equipment Survey. Where, following the Equipment Survey, BT reasonably considers the Equipment is not economically viable to maintain, BT may withdraw the Maintenance Service.

6. Customer's Responsibilities

- 6.1. The Customer will specify in the Order the details of the Customer Contact Point and ensure that any changes to the Customer Contact Point are notified to BT in writing forthwith.

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- 6.2. Unless otherwise agreed, the Customer Contact Point will be responsible for the provision of initial support to users requiring help or guidance in the use of the Service and, if it is unable to resolve any queries or problems, for the reporting of all faults in the Service to BT and for all subsequent fault management communications between BT and the Customer. The Customer Contact Point (or another nominated customer employee) will be available during the period of cover applicable to the level of Service Care provided under this Contract and the Customer acknowledges that if the Customer Contact Point (or another nominated customer employee) is not available at all such times, BT may not be able to meet the applicable target response times.
- 6.3. The Customer will not stack any equipment or materials on top of the CPE and will ensure it is properly ventilated at all times. The Customer will ensure that there is a reasonable working area around the CPE.
- 6.4. The Customer shall care for and operate the CPE in accordance with any instructions issued by its manufacturer or by BT and shall not repair, adjust or modify it without BT's prior written consent. The CPE must only be used for the purpose for which it was designed.
- 6.5. Where the Customer is responsible for any preparatory work, such as the configuration of software, or the provision of items required by BT in order to be able to fulfil its obligations, the Customer shall ensure that all such activities are completed and items made available in sufficient time to allow BT to complete its work in accordance with the agreed timetable. It shall also ensure that all information reasonably required by BT in order to provide the Service is made available to BT in a timely manner.
- 6.6. The Customer shall be responsible for ensuring the compatibility of any applications it wishes to use with the Service. The Customer acknowledges that BT does not make any guarantee regarding the performance of the Customer's LAN or about the traffic volumes which can be carried by it.
- 6.7. However the Customer may make configuration changes in accordance with and within the limits specified in the supplier's customer documentation and within the terms of the appropriate approval as required by legislation; the Customer must notify BT of any such configuration changes. Any configuration changes made by the Customer must be made in accordance with the procedures and parameters set out in any documentation applicable to the CPE.
- 6.8. To co-operate in diagnosing faults by carrying out any diagnostic and test routines requested by BT or included in the manufacturer's instructions, and allowing BT to carry out remote diagnostic tests, where appropriate.

SECTION B2: BT Maintenance

1. Options

- 1.1. The Service is available in the following options (the option applicable to the Customer shall be detailed in the Order):-
 - a) **Standard Care - Maintenance Hours: Operates during **Normal Working Hours**.**

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BT will aim to respond to a fault report, where it is received before 1500 hours on one working day, by the end of the next working day. Work will only be carried out during Normal Working Hours.

b) **Prompt Care - Maintenance Hours: Operates during** Normal Working Hours.

Unless otherwise agreed, BT will aim to respond to a fault report within 4 working hours of receipt thereof.

c) **Total Care - Maintenance Hours: Operates** 24 hours per day, 7 days per week including Public/Bank Holidays.

Unless otherwise agreed, BT will aim to respond to a fault report within 4 working hours of receipt thereof.

d) **Custom Care**

Operates during the hours and in accordance with the terms set out in Annex 1 Section 1 herein.

e) **Enhanced Care**

Operates during the hours and in accordance with the terms set out in Annex 1 Section 1 herein.

1.2. In respect of all Maintenance options, the Customer will provide BT with a telephone number and contact name(s) ("the Contact Telephone Number") at the same time the fault is first reported. The Contact Telephone Number will be the Customer's contact point throughout the response period to enable BT to advise on the progress being made to clear the fault as detailed above.

1.3. The Customer accepts that all response times are estimates only. Following the initial response, BT will advise the Customer via the Contact Telephone Number of the progress being made to clear the fault. Where BT employees are working at the site of the fault at the end of the Maintenance Hours, it may be possible for work to continue at the Customer's request. However, this may be subject to an additional charge, and will be subject to availability of BT employees.

1.4. Failure of Service commences when the Customer, during Maintenance Hours, reports a fault in accordance with section 3.2 herein and ends when BT logs the fault as cleared in line with the Fault Management process outlined in Section 3.8 herein.

2. Scope of Service

2.1. The Service covers faults resulting from normal wear and tear. Correction of faults covered by the Service shall be carried out by repair or (at BT's option) by replacement in whole or part. Expended consumable items (to include batteries, internal cabling and patch leads) shall be replaced by BT at an additional charge to the Customer in respect of the new items.

2.2. BT may at its option, where feasible and considered necessary by BT, hold Spares at a BT depot which may be used where available as part of the Service.

2.3. BT reserves the right (where it is considered necessary by BT depending on the Equipment type) to carry out routine inspection or testing (or both) of the Equipment

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- during Normal Working Hours. Inspection or testing will be carried out remotely, or by visiting the Customer Site(s) as appropriate. Any faults revealed by inspection or testing will be notified by BT to the Customer, however the Customer will be required to log a fault call with BT in accordance with Section 3.2 hereof for the issue to be addressed. Following routine inspection or testing, BT may recommend moves or changes to the Equipment, which are not related to faults. Where the Customer accepts and seeks to implement such recommendations, the BT moves and changes process shall be followed, and any work shall be chargeable at a cost to be agreed between the parties.
- 2.4. BT will also attend to faults that arise as a result of causes or circumstances other than fair wear and tear, however an additional charge shall be payable by the customer in for such faults and an indicative table of rates in respect of such charges is set out in Annex 3 hereto. Such other causes or circumstances include (by way of illustration):
- a) misuse; incorrect environmental conditions including incorrect temperature and humidity levels; faulty manufacture or design outside of warranty; mains electrical surges or failures;
 - b) lightning damage; electromagnetic interference; any other accidental or deliberate damage;
 - c) correction of defects following the removal or connection of Equipment other than by BT;
 - d) connection by the Customer of other equipment to the Equipment; or
 - e) BT being denied access to the Equipment.
- 2.5. The Service does not cover faults arising from the following (however BT may on request and at its option provide ad hoc consultancy in relation to such faults, subject to an additional charge):
- a) loss of Customer generated software programmes;
 - b) work at the Customer's request outside the Maintenance Hours;
 - c) replacement or provision of additional wiring and cabling; or
 - d) faults reported by the Customer which are not covered by this Contract.
 - e) faults or network issues relating to viruses or mis-configuration of servers

3. Fault Management

- 3.1. BT will provide a helpdesk which will be a single point of contact to which all problems, faults and queries arising in connection with the operation of the Service can be reported. The helpdesk will be available during the Maintenance Hours.
- 3.2. If the Customer wishes to report a fault in the Service, the Customer Contact Point (or another nominated customer employee) will contact the helpdesk via the telephone number notified to the Customer by BT. The Customer warrants that prior to reporting a fault, it will carry out an initial diagnosis to ensure that only faults in the Service are reported to BT.
- 3.3. To enable the Customer's faults to be logged accurately, the Customer, when reporting a fault, will provide all information reasonably required by BT in connection with the fault, such as the Site location and CPE details. BT will then give a fault reference number to the Customer. All communication in respect of a reported fault must be made with the BT Customer Service Centre quoting the reference number.
- 3.4. Following the report of a fault in accordance with the procedures specified above, BT will respond by carrying out one or more of the following actions:

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- a) providing advice by telephone, including advice, where appropriate, as to tests and checks to be carried out by the Customer;
 - b) where possible, carrying out diagnostic checks from BT premises;
 - c) where possible, resolving the fault remotely from BT's premises.
 - d) visiting the Site only if the actions above do not result in the fault being diagnosed or cleared and where such a visit is considered necessary by BT.
- 3.5. BT shall take all proper steps without undue delay to correct the fault, in accordance with the applicable Maintenance Option.
 - 3.6. BT may remove all or part of the Equipment from the Site for the purpose of inspection, testing and repair, but whenever reasonably practicable will take steps to protect the continuity of the Customer's facilities.
 - 3.7. Faults in hardware will be corrected by repair or, at BT's option, replacement of the affected item either in whole or in part. Except in the case of BT Equipment which will at all times remain the property of BT, replacement items of equipment will become the property of the Customer (subject to compliance by the Customer with the provisions of this Contract covering transfer of title in CPE and to any rights of the Company in respect of Supplied Equipment) and replaced items will become BT's property.
 - 3.8. When the fault has been cleared, BT will, unless otherwise agreed, immediately contact the Customer Contact Point to notify that the Service has been restored. If BT is unable to contact Customer directly after three attempts, a message will be left by voicemail or email and the trouble ticket will be suspended. The ticket will not be closed until the Customer confirms that the issue is resolved.
 - 3.9. If a fault frequently recurs, or if in the Customer's reasonable opinion the fault is sufficiently serious or the Customer has a complaint about the BT helpdesk, the Customer may treat this as a dispute and invoke the provisions of Dispute Resolution in the General Terms and Conditions of the Master Services Agreement.
 - 3.10. If a fault in the Service is reported by the Customer and BT does work to correct it but finds there is none or finds it has been caused by some act or omission on the part of the Customer or if BT agrees to attend a Site outside the Maintenance Hours, BT may charge the Customer for the work.

SECTION B3: Cisco SMARTnet Maintenance (where available)

1. SMARTnet is a Fault Repair service provided by Cisco on behalf of BT for BT Provided Equipment supplied in the country or countries detailed in the Order Form. SMARTnet is not available if the Customer selects Option 1 as described in Section 5 above.
2. BT will provide the SMARTnet Fault Repair service as more fully described on the Cisco website, which contains a glossary of terms, Cisco severity and escalation guidelines, Services not covered and the latest Service description.
3. SMARTnet Options provided by Cisco on behalf of BT (the Option will be specified in the Order Form)
 - a) SMARTnet 1 – Cisco will provide a fault repair service for BT Provided Equipment supplied in the country or countries detailed in the Order Form, operating twenty four hours per day, seven days per week, including local holidays in the country or region where the Site is located. Cisco will deliver but not install replacement parts

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to the Site where the BT Provided Equipment is registered within 4 hours of Cisco determining that a replacement part is required.

- b) SMARTnet 2 – Cisco will provide a fault repair service for BT Provided Equipment supplied in the country or countries detailed in the Order Form, during local Business Hours in the country or region where a Site is located, eight hours per day, Mondays to Fridays excluding local holidays. Cisco will deliver but not install replacement parts to the Site where the BT Provided Equipment is registered within 4 hours of Cisco determining that a replacement part is required.
 - c) SMARTnet 3 – Cisco will provide a fault repair service for BT Provided Equipment supplied in the country or countries detailed in the Order Form during local Business Hours in the country or region where a Site is located, eight hours per day, Mondays to Fridays excluding local holidays. Cisco will deliver but not install replacement parts to the Site where the BT Provided Equipment is registered on the next Business Day during local Business Hours provided that the fault request is received before 3:00pm local time on the previous Business Day.
 - d) SMARTnet On-Site - is also available subject to additional charges and can be selected with any of the above SMARTnet options. This option comprises the attendance of a field engineer who will deliver and install the replacement parts for the BT Provided Equipment.
4. When the Customer has selected a SMARTnet option and accepted the quotation from BT, registration with Cisco is done electronically by BT. The Customer is notified via an e-mail from BT giving details of the option selected and the telephone numbers to call for support for the BT Provided Equipment.
5. Each SMARTnet Option begins on the date that the Customer's Order is accepted by BT and will continue for a period of 12 months from that date. Prior to expiry of the 12 month period the Customer will be contacted by BT to ask if they wish to
- a) renew the SMARTnet Option for a further period of 12 months, or
 - b) select another option.

If the Customer wishes to renew its current option or select another option, BT will provide a quotation. BT may decline to provide a quotation if BT is unable to offer the option for the BT Provided Equipment, including without limitation BT's or Cisco's inability to provide the option given the age of the BT Provided Equipment.

6. The SMARTnet 1 and SMARTnet 2 options are only available if the distance from the registered Site location for the BT Provided Equipment to the parts depot or authorized Cisco service location is within the following limits
- a) for the USA within 100 driving miles;
 - b) for Europe and Canada within 120 driving kilometres;
 - c) for Australia, New Zealand and select countries in Latin America and Asia within 75 driving kilometres.

d)

Further information on specific countries and / or locations is available from BT.

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7. The SMARTnet Options described in this Section B3 may not be available for all Cisco Equipment.

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ANNEX 1 –

AVAYA LICENCE TERMS (applies only where Customer purchases Avaya equipment)

1. **Software License Terms.** Unless otherwise agreed between the Parties in writing, the following license terms shall apply to any Avaya Software provided by BT to the Customer as part of the Services supplied, and shall be in addition to any terms set out elsewhere, and in the event of conflict between these terms and the PSA and/or Service Schedule, these licensing terms shall apply:
 - 1.1. Software supplied to the Customer pursuant to these terms and conditions may embody and include Software in object code (machine-readable but not human-readable form). The Software may be contained on disk drives, erasable programmable read-only memories, programmable array logic devices, disk cartridges, or in other electronic or mechanical forms. Additionally, use of the Software can result in the production of human-readable features such as documentation, report formats, menus, audible prompts and tone sequences.
 - 1.2. BT grants to the Customer, or will cause to be granted, a non-exclusive, personal, non-transferable, limited licence to use in object code form only the number of copies of the Software and related Documentation which are provided by BT hereunder and in default of any express provision the Customer may use only one copy of the Software and to limit the number of users to the number specified in the relevant Order Form and to use such copies only on the Hardware on which it was originally installed, or intended to be installed, at the Customer's premises designated in the applicable Order Form and solely for the purpose of operating the Supplies for the Customer's internal business and not for the benefit of any third party.
 - 1.3. Avaya retains title to all the Software, including any remotely enabled Software and all Updates and Upgrades thereto (excluding media on which it is recorded) and all intellectual property rights in the Software. No title to Software or intellectual property rights are transferred to the Customer hereunder whatsoever.
 - 1.4. Notwithstanding that BT permits the Customer to use the Software on a temporary basis on back-up Hardware when the original Supplies are inoperable the Customer may not copy the Software or the human-readable features referred to herein for any purpose except for back-up or archival purposes where the Customer may make as many backup copies of the Software as are necessary for its lawful use of the Software in accordance with the Contract and applicable Order and all such copies must contain the same copyright notice and proprietary markings that the original Software contains.
 - 1.5. Use of Software on multiple processors is expressly prohibited unless otherwise agreed in writing by BT, or unless (and to the extent) it is used on the supplies which themselves contain multiple processors.
 - 1.6. the Customer must separately order and licence remotely enabled Software. Such Software may only be enabled by BT (or Avaya) and, as a condition of the BT's use of such Software, the Customer shall give BT and/or Avaya remote, system-level access to its Supplies at a mutually agreeable time to enable such Software. With respect to features, functionality or capabilities inherent in the Software, the Customer may not enable such features and capacities, or attempt or permit any third party to do so.
 - 1.7. If the terms of the Contract or any Order differ from the terms of any licence agreement packaged with third party Software supplied hereunder, the terms of the licence agreement applicable to the packaged third party Software (such as, but not limited to, shrink wrapped, click wrapped or click through licences) shall govern.
 - 1.8. If any Updates, Upgrades, amended or different versions of the Software are supplied to the Customer under this Schedule then, save as may be otherwise agreed between the Parties, they shall be subject to all of the terms of this Schedule and the term "Software" shall after supply of such versions be deemed to include reference to them.

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- 1.9. Any breach of the terms of this Annex 1, if unremedied within seven (7) Business Days of the Customer receipt of a written notice from BT, shall immediately and automatically terminate the Software Licence and BT may seek any remedy available hereunder, or in law, equity or otherwise.
- 1.10. On termination of the Schedule or Order or the Software licence contained herein all copies of the Software shall either be returned to BT or, at BT's option, destroyed and the Customer shall promptly provide BT with written notice of such destruction.
- 1.11. To the extent permissible under applicable law, the license and sublicense rights granted under Clause 1.2 of this Annex 1 shall not include any rights to:
- 1.11.1. Decompile, disassemble or reverse engineer the Software;
 - 1.11.2. Modify or create any derivative works (including, without limitation, translations, transformations, adaptations or other recast or altered versions) based on the Software or alter the Software;
 - 1.11.3. Merge the Software with any other software except as expressly set forth in the related Documentation;
 - 1.11.4. Use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software except as expressly authorized by this Annex 1;
 - 1.11.5. Distribute, disclose, or allow use of the Software, in any format, through any timesharing service, service bureau, network or by any other means, to or by any third parties;
 - 1.11.6. Enable any Software features or capacity (e.g., additional storage hours, agents, ports or mailboxes) which BT licenses as separate products without BT's prior written consent; or
 - 1.11.7. Permit or encourage any third party to do any of the foregoing.
- 1.12. The Customer agrees that BT and/or Avaya may, at its discretion, electronically inspect and audit the configuration of the Customer's supplies configurations for compliance with the terms of this Annex 1 and, in particular this Software Licence as it relates to remotely enabled capacity, features and functions. Such inspection or audit may occur at the time of enablement of any separately licensed Software feature or capability, such as incremental capacity, and once each calendar year, upon two (2) Business Days notice to the Customer from BT. The Customer agrees to cooperate with BT in conducting such audits including making remote system level access to the Customer's Supplies and Software available for such purpose.
- 1.13. The Customer will ensure that its employees and users of all Software licensed under the Contract or any Order comply with the terms of this Annex 3.

2. Definitions applicable to this Annex only;

Deliverables means customized Software, hardware, Documentation, or other work product of the Services created by Avaya and deliver to the Customer in accordance with the relevant statement of work.

Documentation means the technical specification that Avaya generally makes available for its products, the installation, user and maintenance guides, training manuals and similar Avaya documentation supplied and includes any statements of work with respect to the Services. Does not include any marketing material.

Hardware means all standard hardware and its components, materials and expressly excludes Software, Deliverables and Documentation

Information means information whether written or oral or any other form, including, but not limited to, Documentation, reports, data, notes, drawings, models, patterns and samples.

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Major Release means a major change to the Software that introduces new features and functionality. A Major Release is typically designated as a change to the digit(s) to the left of the first decimal point (e.g. [n].y.z).

Minor Release means a minor change to the Software that introduces a limited amount of new features and functionality. A Minor Release is typically designated as a change in the digit(s) to the right of the first decimal point (e.g. n.[y].z).

Patches means an update to the Software typically providing error corrections provided between Major Releases, Minor Releases and Service Packs, to address critical problems that cannot be resolved through application of the latest Service Pack or latest Major or Minor Release of the Software.

Service Pack means for the purpose of support Services an update to the Software typically containing fixes for non-critical problems and critical problems and which typically include cumulative fixes from prior Patches and Service Packs. Service Packs generally follow a predictable delivery schedule.

Software means the Avaya software programs in object code form, whether as a stand-alone products or pre-installed on Hardware. Software does not include any Deliverables.

Supplies means replacement parts to the relevant Services provided under this Service Schedule, Updates, Service Packs, Patches and Upgrades, Information and the support services provided by or through Avaya this Schedule required to be supplied or performed for the Customer.

Updates means a change within a major Software release that typically provides maintenance correction only, but may introduce new optional features and is designated with a non-zero decimal as its version number, such as 3.1.

Upgrades means Minor Release or Major Release.