

# STREAM NETWORKS 12 Month End User Agreement

THIS AGREEMENT is made on \_\_\_\_\_

## BETWEEN

- (1) **STREAM NETWORKS LIMITED** (Company No: 06229310) whose registered office is situated at 6 Langdale Court, Witney, Oxon, OX28 6FG ("**Stream Networks**"); and
- (2) [ ] **LIMITED** (Company No: [ ]) whose registered office is situated at [ ] (the "**Client**").

## BACKGROUND

- (A) Stream Networks Limited is in the business of providing hosted IP telephony service solution for its clients.
- (B) 'Partners' are accredited sales and installation partners for Stream Networks.
- (C) The Client wishes to engage Stream Networks to provide such solutions.
- (D) Accordingly the parties have agreed to enter into this Agreement.

## NOW IT IS AGREED AS FOLLOWS

### 1. DEFINITIONS

- 1.1 In this Agreement where the context admits:

**Acceptance** means acceptance in accordance with Clause 7 and "Accepted" shall be construed accordingly;

**Acceptance Criteria** means the acceptance criteria specified by the Client to Stream Networks in writing prior to the Installation which are agreed in writing by Stream Networks (if any);

**Acceptance Tests** means those tests proposed by the Client and agreed in writing by Stream Networks prior to the Installation jointly agreed between the parties to verify that the Hardware complies with the Acceptance Criteria (if any);

**Business Day** means a day other than a Saturday, Sunday or public holiday in England;

**Claims** means all costs, claims, damages, losses, demands and expenses (including reasonable legal expenses);

**Deliverable(s)** means the Hardware and the Network Services;

**Installation** means the provision of access network, hardware and router installed by an accredited partner, Stream Networks are not responsible for any third party equipment such as POE switches and CAT5/6 cabling

**Effective Date** means the date first above written;

**Fees** means those fees and expenses reserved by clause 6 of this Agreement;

**Hardware** means the equipment provided to the Client under this Agreement by Stream Networks, installed at the Installation Address and directly connected to the Network Services termination point and rental of all associated software licences required to use the Hardware provided by Stream Networks;

**Installation Address** means the address agreed in writing by Stream Networks with the Client for installation of the Deliverables or, as the case may be, any other premises in

which for the time being the Deliverables are installed with the consent of Stream Networks by the direction of the Client (including in each case any pipes wires cables conduits or other conducting media serving the Installation Address) and which the Client warrants as a continuing warranty in each case with full title guarantee may be accessed by Stream Networks its agents and contractors with or without plant for purposes of carrying out or completing the Installation, maintenance or removal of the Deliverables at any time without infringing the rights of any third party;

**Maintenance Services** means any maintenance services required to be carried out to the Hardware by Stream Networks as an express written term if this Agreement;

**STREAM NETWORKS HOSTED IP TELEPHONY SERVICE** means the provision of Hardware and Network Services under the Agreement including termination to the Public Switched Telephone Network;

**Network Services** means all access network services delivered to the Installation Address by Stream Networks including all inbound and outbound call traffic or otherwise those services provided or arranged by Stream Networks from time to time to facilitate the provision of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE to the Installation Address;

**Price List** means the Stream Networks list of charges for the provision of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE to the Client annexed hereto or otherwise notified to the Client in writing on or before the Effective Date (as the same may be amended or supplemented from time to time);;

**Refusal Notice** means a notice issued by the Client identifying (i) the discrepancy between the Hardware and the relevant Acceptance Criteria; and (ii) the changes necessary to ensure that the relevant Hardware complies with the Acceptance Criteria;

**Standard Fault** means a fault with STREAM NETWORKS HOSTED IP TELEPHONY SERVICE in which less than 20% of STREAM NETWORKS HOSTED IP TELEPHONY SERVICE capacity is affected;

**System Crash** means a fault with STREAM NETWORKS HOSTED IP TELEPHONY SERVICE in which at least 20% of STREAM NETWORKS HOSTED IP TELEPHONY SERVICE capacity is affected;

**Service Failure** means the continuous total loss of the facility to make or receive a Call.

**Technical Specification** means the technical specification in respect of the Hardware (if any), agreed between the Client and Stream Networks on or before the Effective Date;

**Warranty Period** means, in respect of all Hardware comprised within an Installation, a period of 90 days from the Acceptance (or if applicable deemed Acceptance) of the Installation.

- 1.2 References to Clauses are to clauses of this Agreement.

- 1.3 Where any party to this Agreement comprises more than one person at any time then obligations of that party hereunder shall be joint and several obligations.

### 2. AGREEMENT

- 2.1 This Agreement is made on (but not before) the Effective Date.

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### 3. SERVICES

- 3.1 Stream Networks shall provide the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE to the Client in consideration of which the Client shall pay the Fees and provide or procure the provision of reasonable access to Stream Networks its employees, partners and contractors at the Installation Address (to install maintain and remove the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE).
- 3.2 Stream Networks shall provide the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE;
- (a) using reasonable skill and care; and
  - (b) in accordance with good industry practice.
- 3.3 The Client acknowledges and agrees that any dates given by Stream Networks for the provision of Deliverables or maintenance are estimates only. Unless expressly agreed otherwise in writing with the Client, Stream Networks shall not be liable to the Client for any failure to meet such dates, and time shall not be of the essence for these purposes.
- 3.4 Stream Networks shall (subject as hereinafter provided in clauses 3.5, 3.6 and 5) supply maintenance services for the Network Services (either remotely or by physical intervention at the option of Stream Networks) without cost to the Client during Telco Service's normal working hours 09.00 to 17.30 hours on Business Days. The maximum response time for a Standard Fault will be 8 working hours and the maximum response time to a System Crash will be 4 working hours.
- 3.5 Unless caused by the negligent act or omission of Stream Networks, Stream Networks shall not be obliged to carry out any maintenance to the Hardware outside normal working hours nor where required as a result of any unauthorised act or omission or default of the Client or any third party (including without limitation any failure to adhere to manufacturer's instructions or guidelines, electrical surges or failures in the public telecommunication system, damage to the Hardware caused by vibration to the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE housing, unauthorised re finishing or re painting or relocation or removal of the Hardware) nor where arising as a result of any matter outside the reasonable control of Stream Networks, but any such maintenance provided by Stream Networks in such circumstances shall be provided at the Stream Networks rates and terms then applicable at the date when the relevant maintenance is provided.
- 3.6 Stream Networks cannot guarantee that the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE will be free of faults or interruptions, timely or secure to the extent the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE may be affected by things Stream Networks cannot control, such as (without limitation) lack of network capacity, physical obstructions, issues with the customers Local Area Network or atmospheric conditions.

### 4. RISK

- 4.1 Risk in (but not title to) the Deliverables comprised in the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE shall pass on delivery and the Client will be responsible for the security, safe keeping and insurance of all Deliverables from the time each item is delivered to the Installation Address. The Client

is advised to notify its insurers accordingly and agrees that the Client will insure and keep insured the Deliverables in the full reinstatement value and provide reasonable evidence thereof on demand and procure that the interest of the owner of the Deliverables is noted on the relevant policy.

### 5. WARRANTY

- 5.1 Stream Networks warrants that during the Warranty Period, the Hardware shall comply with the Technical Specification.
- 5.2 If during the Warranty Period, the Hardware fails to function in accordance with the Technical Specification, then subject to the due observance and performance of this Agreement by the Client and clauses 3.5 and 3.6 of this Agreement, Stream Networks shall repair any defects in the Hardware and/or provide Maintenance Services in accordance with clause 3.4 at no extra charge to the Client, subject always to clauses 3.5 and 3.6 or unless the defect is otherwise caused by the Client or any third party or unless the Client has modified the Hardware or any Deliverable in any way or failed to adhere to the terms of the manufacturers instructions.
- 5.3 Stream Networks' obligations under Clause 5.2 shall be the Client's sole and exclusive remedy in respect of any breach of Clause 5.1. Stream Networks shall have no further liability to repair any Hardware after the expiry of the Warranty Period unless the Client has entered into a separate support contract with Stream Networks in respect of the Hardware.
- 5.4 The limited warranty set out in Clause 5.1 is given in lieu of all other warranties. Except as expressly set out in this Agreement, any representations, warranties, terms and conditions (whether implied by law, statute, custom or otherwise) are hereby expressly excluded to the maximum extent permitted by law.

### 6. FEES AND EXPENSES

- 6.1 The Fees shall be payable in accordance with the Price List for use of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE against invoices submitted by Stream Networks to the Client. Stream Networks invoices shall be payable by direct debit and variable call charges will be calculated in accordance with usage recorded by call logging or recording data of Stream Networks or its service providers which data shall be final and binding upon the parties to this Agreement. Where any direct debit payments are withheld because of insufficient Client funds then without prejudice to the rights of Stream Networks hereunder Stream Networks reserves the right to charge a reasonable administration fee of not less than £5 plus VAT in relation to each such non payment.
- 6.2 The Fees are exclusive of VAT and the Client shall pay the VAT payable in respect of the Fees in the amount and in the manner prescribed by law from time to time.
- 6.3 All invoices may be rendered by Stream Networks at any time and shall be payable by the Client in full, without set off, deduction, abatement or withholding on any grounds within 14 days of the date of an invoice. Stream Networks shall be entitled to charge interest at a rate of 3% above the base rate of Lloyds TSB Bank plc on all outstanding amounts from the due date until the date payment is received, whether before or after judgement.
- 6.4 Stream Networks reserves the right to vary or increase the terms of the Price List by not less than 4 weeks' notice in writing to the Client and to the fullest extent permissible by

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law this Agreement shall remain in full force and effect following such variation or increase whether arising as a result of any ruling or instruction or levy of any competent authority or otherwise.

6.5 Stream Networks or its partners may (but is not obliged) to carry out Installation outside normal working hours where requested by the Client, but where Stream Networks or its partners agrees in writing to do so the Client shall be liable to pay an increased installation charge to be confirmed in writing by Stream Networks prior to Installation.

6.6 The Client by entering into this Agreement unconditionally and irrevocably recognises acknowledges warrants and confirms that:

(b) it undertakes to the fullest extent permissible by law during the term of this Agreement not to route any calls (including without limitation voice, fax and data) via any third party nor use hardware nor services directly competitive with the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE;

(c) it agrees to pay all call charges levied by any telecommunications service provider and to adhere to all terms and conditions applicable to those call charges;

(d) the execution of this Agreement by the Client does not and will not infringe the rights of any third party;

(e) there is no further act matter or thing outstanding on the part of the Client or its advisors that would or might impede or preclude the Installation taking place at any time from the Effective Date including without prejudice to the generality of the foregoing any outstanding issues relating to any third party consent required to use the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE from the Installation Address or otherwise relating to the suitability design construction use or enjoyment of the Installation Address for the purposes of using the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE from the Installation Address.

### 7. ACCEPTANCE

7.1 Stream Networks shall notify the Client by email or otherwise in writing of the completion of the work required to install the Hardware at the Installation Address and connection to the Network Services termination point ("Installation").

7.2 On receipt of notification of the completion of the Installation, the Client shall be entitled in good faith to carry out Acceptance Tests on the Deliverable(s) comprised in the Installation. If (a) the results of the Acceptance Tests demonstrate that the Deliverable(s) in question does not comply with the Acceptance Criteria in all material respects, and (b) the Client has served a Refusal Notice on Stream Networks within 5 days of receipt of the Deliverable(s) in question then Clause 7.3 shall apply. In all other circumstances, following the completion of the Acceptance Tests (or within 7 days of the date of Installation if no such Acceptance Tests are carried out by the Client), the Installation and the Deliverable(s) comprised thereby shall be deemed to be Accepted, and Stream Networks may invoice the Client for any Fees and expenses as being contingent on Acceptance of the Deliverable(s) in question.

7.3 If the Client serves a Refusal Notice on Stream Networks pursuant to Clause 7.2, Stream Networks shall be entitled without liability to the Client at the sole discretion of Stream Networks either:

(i) to remove and or uninstall the relevant Deliverable(s) without liability to Stream Networks; or,

(ii) to modify the Deliverable(s) identified in the Refusal Notice in order to ensure that such Deliverable(s) complies with the relevant Acceptance Criteria in all material respects. Stream Networks shall then notify the Client by email or otherwise in writing within a reasonable period of time that the Deliverable(s) has been so modified. The Client shall then be entitled to perform a further set of Acceptance Tests on the relevant Deliverable(s) in accordance with Clause 7.2. This process shall be repeated until the earlier of:

(a) Acceptance of the Deliverable(s) (in accordance with Clause 7.2); or

(b) the termination of the relevant Installation pursuant to Clause 11.3 (e) (which such termination shall be without prejudice to clause 10.3.

### 8. THE CLIENT'S OBLIGATIONS

8.1 The Client must at all times, ensure that the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE is accessed and used:

(a) only in accordance with this Agreement, any user guide and any other instructions Stream Networks gives to the Client from time to time; and

(b) only in accordance with all relevant legislation including the Telecommunications Act 1984 the Communications Act 2003 the Data Protection Act 1998 and applicable Health and Safety legislation, regulations, codes of practice, licenses, guidance and other requirements of any relevant government or governmental agency.

8.2 The Client shall not use, nor allow any other(s) to use, the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE:

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- (a) for any improper, immoral, illegal or unlawful purpose;
- (b) to store, send, reproduce or receive a communication which is, or is intended to be, a hoax call to emergency services, or which is defamatory, offensive, abusive, indecent, obscene or menacing;
- (c) to violate or infringe any rights of, or to cause annoyance, inconvenience or anxiety to, or to interfere with or damage, any other person;
- (d) in such a way that may impair, interfere with, damage or affect the operation or quality of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE or the relevant Deliverable; or
- (e) fraudulently or illegally.
- 8.3 The Client:(a) shall keep the Hardware in good repair and shall not alter or move the Hardware, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so;(b) shall not connect nor permit the connection of the Hardware into any equipment which is not compliant with applicable health and safety telecommunications or other applicable legislation for the time being in force (and without limitation Stream Networks reserves the right to suspend withdraw or refuse to supply the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE in the event that Stream Networks in its absolute discretion deems such equipment non compliant as aforesaid);(c) shall not sell, let , mortgage, charge, pledge, dispose of or do anything that would prejudice the Hardware or the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE in any way; and(d) will allow Stream Networks and its representatives to inspect, test, modify, change, add to, replace or remove any such Hardware on reasonable notice.
- 8.4 The Client shall provide all reasonable assistance and information with regard to the supply of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE.
- 8.5 The Client hereby irrevocably authorises Stream Networks to act on the Client's behalf in all dealings with the operator of any telecommunications network or system in connection with any matter that enables Stream Networks to provide or to continue to provide the Client with the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE (including without limitation giving all nominations notices and authorisations to any telecommunications provider to facilitate the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE via that provider).
- 8.6 The Client hereby consents to disclosure of all information of a confidential nature relating to the Client (and authorises such disclosures pursuant to applicable data protection legislation) for the purposes of administering this Agreement.
- 8.7 The Client will at all times during and following termination of this Agreement on demand indemnify and keep indemnified and hold harmless Stream Networks its officers, partners, agents, employees and contractors from and against all Claims together with all VAT due thereon arising as a result of any breach non observance or non performance of this Agreement by the Client or otherwise as a result of any act or omission of the Client.
- ### 9. VARIATIONS
- 9.1 The right is reserved to Stream Networks to make variations to Fees in clause 6.4.
- 9.2 Stream Networks may vary the other terms of this Agreement at any time by posting the changes on its website and, if any variation of these terms and conditions is likely to cause material detriment to the Client, by giving the Client reasonable prior notice. Stream Networks will only do this if it has a valid reason, for example to reflect changing arrangements with any operator of any telecommunications network or system over which Stream Networks provides the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE or changing legal, regulatory or business requirements. In the event of any such change, the Client shall have the right to terminate this Agreement by giving Stream Networks 7 days' written notice. The Client agrees that if the Client does not serve such notice within 30 days after any variation(s) to these terms and conditions has been posted on Telco Service's website or, in the case of a variation which is likely to cause material detriment, notified to the Client, the Client will be bound by the Agreement as varied.
- ### 10. SUSPENSION AND CANCELLATION
- 10.1 Without prejudice to the accrued rights of Stream Networks hereunder (including without limitation the right to terminate this Agreement on the terms hereinafter appearing) and without liability to the Client Stream Networks may at its discretion suspend the Client's access to the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE immediately: a) in the event of any breach (or suspected breach) of the terms of this Agreement by the Client or any other agreement to which the Client and Stream Networks are parties; b) if required to do so by the Government, an emergency service organisation or any other competent body or authority; c) for repairs, maintenance or improvement; or d) if Stream Networks has good reason to suspect fraudulent activity or misuse of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE.
- 10.2 In the event of suspension of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE as aforesaid the Client shall pay for and indemnify Stream Networks on demand against all costs incurred in suspending and re connecting the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE and shall be solely responsible for discharging any additional telecommunication costs incurred by the Client as a result of suspension of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE.
- 10.3 The Client acknowledges that it has no right to cancel this Agreement whether prior to or at any time following Installation. Stream Networks may (but is not obliged to)

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accept cancellation at any time prior to Installation on such written terms as Stream Networks may at any time prior to Installation in its sole discretion specify and where Stream Networks so agrees in writing (and without prejudice to the generality of the foregoing) the Client shall discharge on demand and indemnify Stream Networks from and against the cost incurred in the provision of the Hardware at the Installation Address.

### 11. TERM AND TERMINATION

11.1 This Agreement shall commence on the Effective Date and continue in full force and effect for a minimum period from and including the Effective Date until and including the date which is 12 months from the date of Acceptance and shall thereafter continue in full force and effect until terminated by either party to this Agreement giving to the other not less than three month's notice in writing to that effect.

11.2 Either party may terminate this Agreement immediately on giving notice in writing to the other in the event that the other is or becomes insolvent, meaning that a resolution is passed or an order is made for the winding up of the other (other than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order, or a receiver or administrative receiver is appointed or an encumbrancer takes possession of any the other's property, or the other suffers any analogous procedure under any foreign law.

11.3 Stream Networks may terminate this Agreement immediately on giving notice in writing to the Client in the event that:

- (a) the Client fails to pay any sums due under this Agreement on the due date; or
- (b) the Client commits a material breach of this Agreement which is not capable of remedy, or (where capable of remedy) fails to remedy such breach within 7 days of receipt from Stream Networks of notice requiring it to do so; or
- (c) Stream Networks reasonably believes the Client has provided false or misleading information to Stream Networks;
- (d) the Client ceases or threatens to cease trading;
- (e) Stream Networks is unable to install or continue to provide the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE.

### 12. EFFECT OF TERMINATION

12.1 Upon termination or expiry of this Agreement:

- (a) Stream Networks will have the right immediately to cease the provision of the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE; and
- (b) all sums payable by the Client to the date of termination shall become immediately due and payable;
- (c) termination shall be without prejudice to the accrued rights of the parties to the date of termination.

### 13. LIMITATION OF LIABILITY

13.1 Nothing in this Agreement shall operate to limit or exclude Telco Service's liability for death or personal injury caused by its negligence, or for fraud.

13.2 Subject to (a) Clause 13.1 (where Telco Service's liability is unlimited) and (b) save as provided in clause 5 of this Agreement Telco Service's maximum aggregate liability for all claims made under or in connection with this Agreement (whether arising in contract, under statute or in tort (including in each case negligence) or otherwise shall be limited to 125% of the total sums paid or payable by the Client to Stream Networks under this Agreement up to the date on which the event(s) giving rise to the claim occurred.

13.3 Stream Networks shall not be liable to the Client for either (a) any loss of profits, loss of revenue, loss of data, loss of use, loss of anticipated savings or (b) any indirect, incidental, or consequential loss either of which arises in any way under or in connection with this Agreement, even if such party has been advised in advance of the possibility of such damages.

### 14. GENERAL

14.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

14.2 Neither party shall be liable to the other for delays caused by an event beyond that party's reasonable control, such as fire, accident, labour dispute, floods, war, insurrection, riot, terrorism, act of government, act of God, but;

14.3 Each party shall use all reasonable efforts to minimise the extent of any such delay. In the event that such an event lasts for more than one month, either party shall be entitled to terminate this Agreement on giving notice in writing to the other.

14.4 The parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties to it.

14.5 Neither party may assign its rights under this Agreement without the prior written consent of the other party. Stream Networks may without liability to the Client sub-contract its obligations and assign its rights in whole or in part under this Agreement in order to duly perform or procure the performance of the obligations of Stream Networks hereunder.

14.6 Neither party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing and executed by a duly authorised officer of the waiving party. No waiver by either party of any provision shall constitute a waiver of such provision on any other occasion.

14.7 The invalidity or unenforceability, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of the remainder of such provision or of any other provision of this Agreement.

14.8 Clauses 4 5 6 8 and 13 shall survive expiration or termination of this Agreement.

14.9 This Agreement constitutes the entire agreement between the Client and Stream Networks relating to its subject matter to the exclusion of all other terms, and supersedes all previous arrangements, agreements, and drafts. The Client acknowledges that in entering into this Agreement it has not relied upon any pre-contractual representation not expressly

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included in this Agreement. Stream Networks shall not have any liability in respect of any pre-contractual representation innocently or negligently made. So far as permitted by law and except in the case of fraud, the Client acknowledges and agrees that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of terms of this Agreement (to the exclusion of all other rights and remedies including those arising in tort or under statute).

14.10 Save as provided above in relation to variations by Stream Networks this Agreement may not be amended unless such amendment is in writing and signed by both parties.

14.11 All notices and other communications in connection with this Agreement shall be in writing. Notice shall be deemed to have been received by a party when actually received in the case of hand delivery, or five (5) days after mailing by first class mail, postage prepaid, to such party at the address of its registered office or principal place of business. Except where specified otherwise in this Agreement, notices may not be sent by email.

14.12 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.13 Stream Networks agrees and declares that the STREAM NETWORKS HOSTED IP TELEPHONY SERVICE complies with the relevant general conditions imposed upon Stream Networks pursuant to the Communications Act 2003 as at the Effective Date.

### 15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement is governed by and shall be construed in accordance with English law.

15.2 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

15.3 If the matter is not resolved through negotiations within 30 days, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure recommended to the parties by the Centre for Dispute Resolution.

15.4 If the matter has not been resolved by an ADR procedure within 30 days of the dispute arising, or if either party will not participate in an ADR procedure, the dispute shall be resolved under the jurisdiction of the Courts of England, whose jurisdiction shall be exclusive in all matters save the enforcement of judgements, where it shall be non-exclusive.

### 16. THE SERVICE GUARANTEE

#### 16.1 Stream Networks Guarantee

##### 16.1.1 Stream Networks guarantees:

(a) To repair a Service Failure in line with the repair service the client has chosen. For Standard Service this means by midnight on the first weekday (not including public and bank holidays) after the day the fault is reported to Stream Networks;

(b) Not to disconnect the Stream Networks Hosted IP telephony Service by mistake; and

16.1.2 If Stream Networks is late in repairing a Service Failure, the Client may choose either:

(a) Call Diversion – as described in paragraph 16.2. This is only available if it is reasonably practicable, and technical restrictions may sometimes prevent Stream Networks from offering this option; or

(b) Daily Rate Rental Credit – the Client may choose daily rate rental credit (as described in paragraph 16.3).

16.1.3 If Stream Networks disconnects the Stream Networks Hosted IP Telephony Service by mistake, the Client may claim daily rate rental credit and/or actual financial loss as described in paragraph 16.3 from the date of disconnection.

#### 16.2 Call Diversion

(c) If Stream Networks provides Call Diversion, Stream Networks will divert the Client's incoming calls, on request, to another fixed line or mobile telephone number of the Client's choice. Once Stream Networks has repaired a Service Failure, Stream Networks will cancel the Client's Call Diversion.

(d) The number chosen must be a UK number, but there are some number ranges to which Stream Networks will not divert the Client's calls (e.g. 0800 or 0870 numbers).

(e) If Stream Networks diverts the Client's calls to a mobile number, the person calling the Client will not have to pay extra costs for making that call.

#### 16.3 Daily Rate Rental Credit

(a) Daily Rate Rental Credit is the amount Stream Networks will credit the Client for each whole or part day Stream Networks is late in repairing a Service Failure. The amounts are shown in the Price List. If the Client claims this, it does not have to prove any loss. If the Client incurs additional losses, it may also claim actual financial loss as described in paragraph 16.3(b)

(b) The maximum amount Stream Networks will credit and/or pay the Client is £2,000 for each site affected, and subject to an overall total of £10,000 for the same failure or series of related failures.

#### 16.4 Payment of Claims

Stream Networks will normally deduct any amount that it owes to the Client under this guarantee from the Client's next bill, however in some circumstances Stream Networks will pay actual financial loss payments by cheque.

#### 16.5 Application of This Guarantee

(a) This guarantee applies to the Stream Networks Hosted IP Telephony Service.

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- (b) This guarantee does not apply if:
  - (i) Someone, other than Stream Networks, has caused the fault
  - (ii) Stream Networks asks for access to the Client Premises and is not allowed access, or
  - (iii) Stream Networks reasonably asks for other help and the Client does not provide it.

16.6 Making A Claim

- (a) The client must make any claim within one month of Stream Networks fixing a Service Failure. This must be done in writing to Stream Networks whose details appear on your bill

AS WITNESS the hands of the duly authorised representatives of the parties on the date shown on the first page:

SIGNED by \_\_\_\_\_ duly authorised )  
representative for and on behalf of STREAM )  
NETWORKS LIMITED in the presence of: )  
)

SIGNED by \_\_\_\_\_ duly authorised )  
representative for and on behalf of THE )  
CLIENT in the presence of: )  
)