

1. INTRODUCTION

1.1 This page sets out the Specific Terms on which (together with the General Terms and Order Terms forming part of the Agreement between us) we, Fonezone Telecommunications Limited trading as Barclay Communications, a company incorporated in Northern Ireland under registered company number NI040916, whose registered office is at Grove House, 145 - 149 Donegall Pass, Belfast, County Antrim, BT7 1DT (“we” or “us”) provide mobile telecommunications devices, Microsoft Office 365® software and associated products (“Products”) and associated services (with the particular exception of our mobile device management service, or payment protection plan, which are dealt with by way of separate specific terms), including support services (“Services”) to you as our client (“you”), as may be more specifically set out within the relevant Order Terms.

1.2 Unless otherwise defined herein, any terms used in these Specific Terms shall have the meaning attributed to them in the General Terms.

1.3 These Specific Terms apply to the Agreement between you and us for the supply of the Deliverables. Please note that by ordering any such Deliverables from us, you agree to be bound by the terms of our Agreement. Where we provide any products or services to you other than the Deliverables the provision of such products or services shall be governed by the relevant Additional Terms applying to such products or services. Separately, you shall also be bound by any terms and conditions or agreement which may apply to or exist between you and your Network Provider in respect of the Deliverables.

1.4 You should print a copy of these Specific Terms or save them to your computer for future reference.

1.5 We may amend these Specific Terms from time to time as set out within the General Terms. Every time you sign a new Order Form for the provision of Deliverables please check these Specific Terms and the General Terms to ensure that you understand the terms which will apply to our Agreement at that time. These Terms were most recently updated on 31 March 2017.

2. DEFINITIONS & INTERPRETATION

2.1 The following terms shall have the following meanings in these Specific Terms:

“Agreement” means the agreement between us for the provision of the Deliverables;

“Charges” means the total charges provided for under the Order Form and the Proposal and otherwise provided for under the Agreement, to be paid on the dates specified by us in the Proposal (or otherwise stipulated by us) in return for the supply of the Deliverables;

“Clause” means a clause of these Specific Terms;

“Deliverables” means the Products and the Services together;

“Extended Term” has the meaning given in Clause 12.1;

“Initial Term” means the initial term set out within the Order Form, which shall, in any event, be no less than 12 months or the term of any agreement in place between you and your Network Provider (whichever is greater);

“Incentives” means any redemptions or similar promotional deals offering you a financial or commercial incentive or rebate when you enter into an Agreement with us, as may be further specified within the relevant Order Terms, including any “Buy Out Sum” that may be paid to you to allow you to break your pre-existing contract with a third party, “Cashback” sum, “Hardware Fund”, “Line Credit”, or the provision of Products free of charge, at a discounted rate from the ordinary retail price or under a payment plan allowing you to pay for the Products by way of periodic instalments;

“General Terms” means our general terms and conditions for the supply of products and services, which shall apply to the Agreement between us in addition to these Specific Terms and any Order Terms;

“Liquidated Damages” has the meaning given in Clause 9.1;

“Network Provider” means the telecommunications company which provides, among other things, the mobile network and telecommunications infrastructure for the Products and with whom you will have a separate contract;

“Order Form” means the order form provided by us in connection with the Deliverables;

“Order Terms” means, in respect of the provision of the Deliverables, the Proposal and the Order Form;

“Our Representative” means your account manager as set out within the Order Form;

“Proposal” means the proposal submitted to you by us in respect of the supply of the Deliverables;

“Specific Terms” means, in respect of the provision of the Deliverables, the terms and conditions in this Schedule A;

“Support Services” means the support services specified in our “Service SLAs” document, the timings for delivery of which shall be, for the avoidance of doubt, indicative only, as well as the other account management services we provide;

“Upgrade” means any upgrade or improvement to your existing package, agreed at the outset of any agreement;

“Your Representative” means the person duly authorised by you to act on your behalf for the purposes of the Agreement and identified to us by you under Clause 4.2; and

“365 Software” has the meaning given to it in Clause 11.1.

3. SUPPLY

3.1 Following signature of the Order Form, and in consideration for payment by you of the Charges, we shall provide the Deliverables to you in accordance with the Agreement.

4. CUSTOMER OBLIGATIONS

4.1 You shall co-operate with us in all matters relating the provision of the Deliverables and, in particular, co-operate with us in all matters relating to billing of the Charges due under the Agreement, including providing us with full and timely access to any online billing system which you may operate, and providing us with any purchase order numbers or details which you may require in connection with any invoices we or your Network Provider may wish to submit in respect of the Charges;

4.2 Upon signing the Order Form, you shall confirm to us the name of the person appointed as Your Representative for the purposes of the Agreement. Your Representative shall have the authority to bind you in all matters relating to the Agreement.

4.3 Upon your signing of the Order Form, we shall also confirm to you the person nominated as Our Representative for the purposes of the Agreement. Our Representative shall be your first point of contact for any queries in relation to the subject matter of this Agreement.

4.4 If our performance of any of our obligations under the Agreement is prevented or delayed by any of your, or your agents’, sub-contractors’, consultants’ or employees’, acts or omissions, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

4.5 You shall be liable to pay us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including without limitation any direct, indirect or consequential losses) that arise directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Agreement, subject to our confirming such costs, charges and losses to you in writing.

5. CHARGES – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

5.1 Although the method for calculation of the Charges outlined in your Order Form will be, subject to Clause 5.2 and 5.3 below, fixed for the Initial Term of the Agreement (subject to the other provisions of the Agreement and any increases introduced by the Network Provider or otherwise outside of our control), we reserve our right to alter our prevailing rates for provision of the Deliverables at any time and without prior notice.

5.2 Where you agree with the Network Provider to downgrade or otherwise reduce, in any way, your tariff with the Network Provider (including through the removal of bolt-ons, any other value added services, or any monetary reduction), during: (a) the Initial Term of this Agreement, you shall pay us on demand, following the expiry of the Initial Term, a sum calculated as the sum total of difference between the amount that we actually received in total Monthly Charges (with the exception of any Charges paid in respect of the 365 Software) over the remainder of the Initial Term from the date such change became effective less the amount that we would have otherwise received in total monthly Charges (with the exception of any Charges paid in respect of the 365 Software) (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term prior to the date of your changing your tariff with the Network Provider) over the remainder of the Initial Term from the date such change became effective, assuming your tariff

- had remained unchanged, which resulting figure shall be multiplied by 0.56 and paid in addition to an administrative fee of £100 (excluding VAT) per telephone number in respect of the work (calculated on a time and material basis) involved in reducing the tariff with your Network Provider, checking your bill reflects any reduction, and calculating and raising an invoice, in acknowledgement of our reasonably incurred administrative costs ("**Calculation Fee**"); or, (b) any Extended Term, where your contract with your Network Provider continues into the relevant Extended Term, following the expiry of the relevant Extended Term, a sum calculated as the sum total of difference between the amount that we actually received in total Monthly Charges (with the exception of any Charges paid in respect of the 365 Software) over the remainder of the relevant Extended Term from the date such change became effective less the amount that we would have otherwise received in total monthly Charges (with the exception of any Charges paid in respect of the 365 Software) (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the relevant Extended Term prior to the date of your changing your tariff with the Network Provider) over the remainder of the Initial Term from the date such change became effective, assuming your tariff had remained unchanged, which resulting figure shall be multiplied by 0.56 and paid in addition to a Calculation Fee of £100 (excluding VAT) per telephone number, calculated as set out above.
- 5.3** If you wish to Upgrade during the term of your Agreement you will be required to enter into a new Agreement with us with a new agreed tariff and Monthly Charge. Any remaining months left from the term of the old Agreement will be added onto the term of the new Agreement, once the relevant Order Form is signed. No Upgrades will otherwise be permitted during the term of the Agreement.
- 6. THE PRODUCTS**
- 6.1** You shall be responsible for the safe keeping and safe use of any Products provided to you during the Initial Term. In particular, you agree during the Initial Term to use all Products with reasonable care in accordance with their relevant operating specifications or manufacturer's instructions, and not to use any Products we have supplied under the Agreement in conjunction with any equipment which we, or the Product manufacturers, did not supply or otherwise approve of in advance.
- 6.2** Any Products we provide to you should, as applicable, comply with the standards set by the Telecommunications Act 1984 (**Act**) and any subsequent or related legislation. We shall not be under any obligation to connect or keep connected any equipment if it does not comply with the Act or if in our reasonable opinion it is likely to cause death, personal injury, and damage or to impair the quality of the Services we provide. You agree to use all applicable Products in accordance with the Act.
- 6.3** We operate a minimum usage policy in respect of any mobile devices/SIM cards we supply to you to which you must adhere, save where they are provided as part of a trial period as outlined in Clause 10. In general, there must be a reasonable level of genuine and regular outbound call usage. Each mobile device/SIM card we supply to you must make an average of at least 10 minutes per month of outbound calls (or SMS/ GPRS usage of equivalent value, i.e. £1+) over a rolling three month period, to be considered "active" at the time the handset is assessed. If at any time during the Initial Term there is a significant drop in usage of the relevant mobile devices/SIM cards, or there is otherwise a failure on your part to adhere to any of the provisions of this Clause 6.3, we shall be entitled to terminate the Agreement forthwith and/or recover any Incentives paid under the Agreement in addition to all losses and charges which we may incur as a result of doing so.
- 6.4** In construing clause 5.2 of the General Terms, title to the Products shall be deemed to pass to you upon the expiry of the Initial Term provided that all outstanding Charges due under the Agreement at that date have been paid in full, and no liability is otherwise outstanding from you to us under the terms of any Agreement between us.
- 7. INCENTIVES**
- 7.1** From time to time we may offer you Incentives to enter into an Agreement. Where we do the nature and value of any such Incentives shall be set out within the relevant Order Terms.
- 7.2** Without limiting any of our other rights or remedies, if you, at any time, fail to perform or delay in performing any of your obligations under any contract with us (including where any Charges are outstanding, or where you purport to terminate/break the Agreement during the Initial Term or any Extended Term), we reserve the right to, acting in our discretion: (a) withhold any Incentives otherwise due to you under the Agreement, (b) otherwise set-off any amount owing to you by us against the payment of any Incentives (in accordance with clause 8.12 of the General Terms), or (c) claim repayment of the value of any Incentives paid to you pursuant to any Agreement (as outlined within Clause 9.1 for example). Such failure shall also disqualify you from receiving any Incentives to which you may have been entitled in the future were it not for your failure to perform or delay in performing any of your obligations under the Agreement.
- 7.3** Where, as part of any Incentive, we offer you a fixed price line rental via cash-back or line credit, this fixed price is dependent on the Network Provider not increasing the price of its services. Where the price of the services is increased by the Network Provider, this is done independently of the Agreement. The amount of payments you receive as part of any Incentive will remain static for the duration of the Agreement and you will remain liable to the Network Provider for any increased charges.
- 7.4** You shall also be liable to repay any Incentives paid to you where it has not been possible to fully fulfil your order for the Deliverables for reasons outside of our control (including due to any failure of the Network Provider, for example, a failure to provide adequate connections for the Products), and you are entitled or permitted to, and elect to, terminate the Agreement as a result.
- 8. CHANGE CONTROL**
- 8.1** Either party may submit written requests for changes to the Agreement (or any part thereof) to the other party during the term of the Agreement. We shall advise you of the likely impact of any such change, including, but not limited to, any effect on the Charges.
- 8.2** The parties shall in good faith discuss changes proposed in accordance with Clause 8.1 as soon as reasonably practicable. Until such time as a change control document is agreed (such agreement not to be unreasonably withheld or delayed by either party) and signed by both parties, covering such change, including any change to the Charges and/or the Order Terms, both parties shall continue to perform their respective obligations under the Agreement as if such change had not been requested.
- 9. LIQUIDATED DAMAGES – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1** If you purport to terminate/break the Agreement, or where we terminate the Agreement due to the occurrence of any of the circumstances outlined in clause 12.2 of the General Terms or pursuant to our rights of termination outlined in this Schedule A ("**Our Termination**"), during: (a) the Initial Term, you shall pay us on demand a sum calculated as the sum total of the remainder of all total monthly Charges, (with the exception of any Charges paid in respect of the 365 Software) (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term prior to the date of your purporting to terminate/break the Agreement or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first) for each remaining month (or parts thereof) of the Initial Term from the date of your purporting to terminate or break the Agreement, or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first, less any amount paid by you to your Network Provider by way of an early termination or break fee (we reserve the right to request written evidence of such a payment), which resulting figure shall be multiplied by 0.56 and paid in addition to (i) a sum calculated at the outstanding value of any Incentives provided to you, (ii) an administrative fee of £100 (excluding VAT) per telephone number in respect of the work (calculated on a time and material basis) involved in transferring each telephone number you have taken out under the Agreement in acknowledgement of our reasonably incurred administrative costs ("**Administrative Fee**"), and (iii) a sum calculated as the sum total of the remainder of all total monthly Charges payable (if

- any) in respect of the 365 Software multiplied by 0.10; or, (b) any Extended Term, where your contract with your Network Provider continues into the relevant Extended Term, you shall pay us on demand a sum calculated as the sum total of the remainder of all total monthly Charges (with the exception of any Charges paid in respect of the 365 Software) (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term and any previous or current Extended Term(s) prior to the date of your purporting to terminate/break the Agreement or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first) for each remaining month (or parts thereof) of the relevant Extended Term from the date of your purporting to terminate or break the Agreement, or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first, less any amount paid by you to your Network Provider by way of an early termination or break fee (we reserve the right to request written evidence of such a payment), which resulting figure shall be multiplied by 0.56 and paid in addition to (i) a sum calculated at the outstanding value of any Incentives provided to you, (ii) an Administrative Fee per telephone number transferred as set out above, and (iii) a sum calculated as the sum total of the remainder of all total monthly Charges payable (if any) in respect of the 365 Software multiplied by 0.10.
- 9.2** If you purport to terminate the Agreement during any Extended Term (where your contract with your Network Provider does not continue into the relevant Extended Term), or where you give us notice that you do not wish the Agreement to renew into any Extended Term (as set out within Clause 12.1 below), you shall pay us on demand an Administrative Fee per telephone number transferred, as set out in Clause 9.1. The payments to be made under Clauses 9.1 and 9.2 shall be made as liquidated damages (**Liquidated Damages**).
- 9.3** By agreeing that these Specific Terms and the General Terms govern the Agreement between you and us, you confirm and we confirm that this sum represents a genuine and reasonable pre-estimate of our loss, based upon our experience of the industry and the nature of the costs we may incur.
- 9.4** For the avoidance of doubt, your payment of the Liquidated Damages shall be without prejudice to any of our other rights and remedies and shall not affect your liability to pay any other amount which may be due under the terms of the Agreement, including without limitation, any accrued interest in respect of any overdue payments.
- 10. TRIAL PERIOD**
- 10.1** Where the Order Terms you have entered into with us indicate that you are to be provided with Deliverables for a free trial period, the provisions of this Clause 10 shall apply.
- 10.2** During the trial period, you shall be provided with a specified number of mobile devices, as set out in the Order Form, equipped with SOTI MobiControl® mobile device management software, which shall be subject to pre-set limits for usage costs. We shall, subject to your compliance with the other terms of the Agreement, cover all usage costs up to a maximum of £10 per device over the duration of the trial period, but any usage costs incurred thereafter shall be subject to payment of the relevant costs, to be charged to you upon expiry of the trial period. Your use of the SOTI MobiControl® mobile device management software shall be subject to our Schedule E specific terms in all respects other than payment of charges.
- 10.3** All trial periods shall commence upon signing of the Order Form and shall continue for a period of 30 calendar days from that date.
- 10.4** Upon expiry of the trial period, you will have the option to either (a) sign a new Order Form for the provision of Deliverables, in which case you may be permitted to retain the mobile devices provided (subject to agreement between the parties as to applicable costs), or (b) if you do not wish to sign a new Order Form, you shall be required to return all mobile devices loaned to you during the trial period, and to pay any outstanding Charges in respect of usage costs (as outlined above), or damaged/non-returned mobile devices (as outlined below), and upon full and clear payment of all such outstanding Charges the Agreement shall be deemed terminated.
- 10.5** You shall have 10 calendar days to return all mobile devices to us if you do not wish to sign a new Order Form. If the mobile devices are not returned to us within this period, or are not returned to us in the same condition as when they were dispatched, we reserve the right to invoice you for the devices. The costs charged to you will be the costs to replace the mobile devices with that of similar make and model (or such lesser Charges, relative to the condition of the mobile devices, as we may, in our sole discretion, determine to be payable). Payment will be due within 7 working days from the date we notify you that the mobile devices were in a defective condition, or the date the mobile devices were due to be returned (as applicable). You shall be required to meet all costs of postage and packaging in connection with the return of the relevant mobile devices.
- 10.6** All Deliverables provided to you during a trial period shall be provided on and subject to the conditions of the Agreement, including any applicable third party terms or other applicable specific terms, save as regards payment of charges, which is separately dealt with in this Clause 10. For the avoidance of doubt, title to any mobile devices provided by us as part of any trial offering shall be retained by us in accordance with clause 5 of the General Terms, and risk in such devices shall pass to you upon delivery.
- 11. MICROSOFT OFFICE 365® SOFTWARE**
- 11.1** The provisions of this Clause 11 shall apply where we procure the provision of Microsoft Office 365® software ("**365 Software**") to you, and shall govern any such procurement.
- 11.2** Subject to payment of the Charges and to the other terms of the Agreement, we shall use reasonable endeavours to procure for you, with effect from the licence date specified on the Order Form, a licence to use the 365 Software during the term specified on the Order Form (unless you exercise your buy-out right to a perpetual licence as specified in the third party licence terms).
- 11.3** You shall only be entitled to use the number of copies of the licensed 365 Software you may purchase from time to time, the initial number of which shall be specified in the Order Terms. You may, from time to time, purchase additional copies of the 365 Software, subject to payment of the then prevailing rates.
- 11.4** For the avoidance of doubt, the provision of any support, training or installation/implementation services by us shall not be included as part of our procurement of licences to the 365 Software, and the provision of any such services shall be subject to separate agreement being reached between you and our IT services team, and the signature of a separate agreement between us in respect of such services.
- 11.5** You acknowledge that the 365 Software, and any documentation that may be provided by our third party suppliers or licensors in relation to same, is/are proprietary to our relevant third party suppliers/licensors, and shall be procured by us only, and supplied to you by the relevant third parties. Further, the 365 Software shall be provided strictly on and subject to the standard licence terms imposed by such third parties. You agree to be bound by such licence terms, and acknowledge that any licence which we may procure for you pursuant to Clause 11.2 shall be granted strictly on and subject to your observance of such licence terms. The relevant third party licence terms are available here <http://static.o2.co.uk/www/docs/business/microsoft-365-18-07-13-clean.pdf> and here <http://office.microsoft.com/en-gb/products/microsoft-software-license-terms-for-office-FX103453735.aspx>. In the event of any conflict between any provision of the Agreement and any provision of such licence terms, you acknowledge and agree that the relevant provision of such licence terms shall take precedence.
- 11.6** You also acknowledge that the 365 Software will be hosted by our third party suppliers/licensors, and that such hosting services shall be provided on and subject to the terms imposed by such third party suppliers/licensors, a copy of which will be provided to you upon request. We shall use reasonable endeavours to inform you in advance of any planned service interruption where notified by our third party suppliers or licensors, but shall not be liable for any service issues however arising.
- 11.7** You acknowledge that our third party suppliers/licensors may from time to time generally upgrade and improve the 365 Software as they see fit, and you acknowledge that such upgrades and improvements may affect your use of the 365 Software. Any support we may provide does not include any

- upgrades, bespoke changes or amendments to the 365 Software you may require or request from time to time.
- 11.8** You accept responsibility for the selection of the 365 Software to achieve your intended results and acknowledge that we have not assessed the suitability of the 365 Software for your requirements, and cannot guarantee that the 365 Software will be suitable for those requirements or that any use or supply of same will be uninterrupted or error free.
- 11.9** You shall: (a) at your cost, provide us and our third party suppliers/licensors with all necessary co-operation in relation to the Agreement, and all necessary data and access to such information as may be required by us, our employees, agents or our third party suppliers, licensors or sub-contractors, in order to deliver the 365 Software, including but not limited to approvals, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to your activities under the Agreement; (c) carry out all your other responsibilities set out in the Agreement in a timely and efficient manner; and (d) ensure that you and the any authorised users use the 365 Software in accordance with the terms and conditions of the Agreement and the relevant third party licence terms and conditions, and shall be responsible for any authorised user's breach of the Agreement.
- 11.10** You shall be liable to pay us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including without limitation any direct, indirect or consequential losses) that arise directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Agreement or the relevant third party licence terms, subject to our confirming such costs, charges and losses to you in writing.
- 11.11** The 365 Software procured under the Agreement shall be procured for you solely on an "as is" basis, excluding all express or implied warranties or guarantees, as to quality or otherwise, to the utmost extent permitted by law, and you assume sole responsibility for results obtained from use of the 365 Software by you or your authorised users, and for any conclusions drawn from such use, and expressly agree and acknowledge that we in no way warrant or guarantee the accuracy or authenticity of any such results, or for the performance or quality of the 365 Software, or the provision of any connected services by our third party suppliers/licensors, more generally.
- 12. TERM AND TERMINATION**
- 12.1** The Agreement between you and us in respect of the provision of the Deliverables shall come into effect on the date of signing of the Order Form and, subject to the other provisions of the

Agreement, shall continue in force for the Initial Term, and shall, save with respect to the 365 Software, which shall be dealt with separately under Clause 11, unless either party serves 3 months' prior written notice upon the other that they do not wish the Agreement to be renewed (such notice to expire no sooner than the end of the Initial Term) be renewed annually thereafter for successive terms of 2 years each (**Extended Terms**), unless and until terminated by either party giving to the other no less than 3 months' prior written notice, such notice to expire no sooner than the end of the relevant Extended Term, or otherwise until the termination of the Agreement in accordance with any of its provisions.

13. EFFECTS OF TERMINATION

- 13.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 13.2** Upon termination of the Agreement due to your breach of the Agreement, or due to the occurrence of any of the circumstances specified in clause 12.2 of the General Terms, you shall, upon our request, (a) promptly return to us the Products (for termination/break of the Agreement during the Initial Term only), (b) pay the Liquidated Damages, (c) repay any Incentives (or the liquidated value of same) provided to you; and/or (d) pay any other outstanding Charges that may be due under the terms of the Agreement.
- 13.3** In the event that you terminate or purport to break the Agreement for any reason we shall not, under any circumstances, be liable for the costs of any alternative supplier or Network Provider you may source.
- 13.4** Upon termination of the Agreement for any reason, you shall, at our request, promptly return to us or otherwise dispose of any Confidential Information which you may have in your possession or under your control, and pay to us all outstanding Charges and other payments, including interest, due under the terms of the Agreement.

14. GENERAL

- 14.1** Conflict: In the event of any conflict or inconsistency between the constituent parts of this Agreement, they shall prevail in the following order: (a) the Order Form, (b) the Proposal (c) these Specific Terms, and (d) the General Terms.
- 14.2** Survival: Without prejudice to the generality of clause 14.8 of the General Terms, the terms of Clauses 1, 2, 4.4, 4.5, 6.4, 7, 9, 10, 11, 12, 13 and 14 shall survive expiry, variation or termination of the Agreement.