



## **Terms and Conditions of LinchPin Network Ltd**

### **WAN Services**

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## 1. Interpretation

### 1.1 In these terms and conditions ("Conditions"):

'CONTRACT' means the contract for the provision of the Specified Service to the Customer incorporating these Conditions, the Specification Sheet and the Supplier's Conditions as made applicable herein

'CUSTOMER' means the person named on the Specification Sheet for whom LinchPin Networks has agreed to procure the provision of the Specified Service in accordance with the Contract

'DOCUMENT' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data

'HANDOVER DOCUMENT' means written information in documentary or electronic format provided by LinchPin Networks to the Customer stating that the installation of the Supplier's Equipment is complete together with such other information as shall be deemed appropriate by LinchPin Networks from time to time.

'INITIAL TERM' means the period commencing on the Operational Services Date and for the period as set out in the Specification Sheet subject to continuation in accordance with clause 7.1

'INPUT MATERIAL' means any Documents or other materials, and any data or other information provided by the Customer relating to the Specified Service

LINCHPIN NETWORKS ' means LinchPin Networks Limited (registered number : 5224922) whose registered office is at Oak Hill House, Somerton Rd, Hartest, Suffolk, IP29 4NA

'OPERATIONAL SERVICES DATE' means the date when the Specified Service is first made available to the Customer.

'OUTPUT MATERIAL' means any Documents or other materials, and any data or other information provided by LinchPin Networks relating to the Specified Service

'SPECIFICATION SHEET' means the sheet to which these Conditions are appended in which the Specified Services are detailed

'SPECIFIED SERVICE' means the service to be provided by LinchPin Networks for the Customer as referred to in the Specification Sheet

'SUPPLIER' means the company named in the Supplier's Conditions which has agreed to supply the Specified Services to LinchPin Networks

'SUPPLIER'S CONDITIONS' means the terms and conditions (if any) attached hereto in accordance with which the Supplier has agreed to supply the Specified Services to LinchPin Networks order

'SUPPLIER'S EQUIPMENT' means the equipment which the Supplier must install in the Customer's premises in order to provide the Specified Services

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 In the event of any conflict between the provisions of these Conditions and the Supplier's Conditions, the terms of these Conditions shall prevail.

## 2. Supply of the Specified Service

2.1 LinchPin Networks shall be responsible for the procurement of and facilitating the supply of, the Specified Service to the Customer subject to the Contract. Any changes or additions to the Specified Service or the Contract must be agreed in writing by LinchPin Networks and the Customer.

2.2 The Customer acknowledges that the Specified Service will be provided by the Supplier. Accordingly, except in so far as they are excluded or varied by these Conditions, the Supplier's Conditions shall be deemed to be repeated in these Conditions and in construing the same, and to the extent necessary to give full meaning to the same, the Supplier in the Supplier's Conditions shall be replaced by LinchPin Networks and where LinchPin Networks is identified in the Supplier's Conditions as the customer it shall be replaced by "CUSTOMER".

2.3 Expressions defined in the Supplier's Conditions shall have, where the context admits in these Conditions, the meanings so defined.

2.4 The Customer shall at its own expense supply LinchPin Networks with all necessary Input Material to allow LinchPin Networks to provide the Specified Services and will ensure that all Input Material is accurate to the fullest extent possible. The Customer acknowledges that LinchPin Networks will be unable to process any order where Input Material is incomplete.

2.5 The Customer shall at its own expense retain duplicate copies of all Input Material. LinchPin Networks shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

2.6 LinchPin Networks may correct any typographical or other errors or omissions in any Document relating to the provision of the Specified Service ensuring the Customer is notified of the said changes.

2.7 LinchPin Networks may at any time by giving reasonable prior notice to the Customer make any changes to the Specified Service which are necessary to comply with any



applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

### 3 Charges

- 3.1 Subject to any special terms agreed, the Customer shall pay to LinchPin Networks the amounts specified in LinchPin Networks invoices to the Customer and any additional sums which are agreed in advance between LinchPin Networks and the Customer for the provision of the Specified Service or which are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.
- 3.2 LinchPin Networks shall be entitled to vary any sums specified in the Contract at any time in accordance with Supplier's Conditions. LinchPin Networks shall not vary the amount to the customer by more than the Supplier's increased cost to LinchPin Networks .
- 3.3 On completion of the Initial Term LinchPin Networks reserves the right, if the Contract is not renewed, to adjust the Customers charges to that of the Suppliers retail pricing.
- 3.4 All charges quoted to the Customer for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.
- 3.5 LinchPin Networks shall be entitled to invoice the Customer upon the Operational Service Date and thereafter in respect of rental at the beginning of each month quarter or year as agreed between the Customer and LinchPin Networks and set out in the Contract or at other times agreed with the Customer.
- 3.6 The amounts specified in LinchPin Networks invoices to the Customer and any additional sums payable shall be paid by the Customer (together with any applicable Value Added Tax) within 30 days from receipt of LinchPin Networks invoice by the Customer (and receipt shall be deemed to take place 48 hours after LinchPin Networks posted each invoice to the Customer having first properly prepaid and addressed the same).
- 3.7 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with Clause 3.6 the customer shall before the invoice is due for payment contact LinchPin Networks in writing setting out the nature of its dispute including:
  - a) the date and number of the disputed invoice;
  - b) the amount in dispute;
  - c) the reason for the dispute; and
  - d) supporting documentation, as appropriate.
- 3.8 Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Clause 3.6.
- 3.9 If payment is not made on the due date, LinchPin Networks shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at a daily rate of 4% above the Bank of England base rate.
- 3.9 If payment is not made on the due date LinchPin Networks shall be entitled, without limiting any other rights it may have, to suspend the

provision of the Specified Service until such time as all payments due and payable to LinchPin Networks have been paid in full together with such sum as LinchPin Networks may charge the Customer in respect of recommencing the provision of the Specified Service (the "Reconnection Fee"). LinchPin Networks will give a minimum 5 working days notice before suspension of service is implemented.

### 4 Supplier's Equipment

- 4.1 LinchPin Networks shall use reasonable endeavours to procure that the Supplier commences to install the Supplier's Equipment on the date and at the address agreed between LinchPin Networks and the Customer and that either LinchPin Networks or the Supplier informs the Customer when the installation is complete by means of a Handover Document forwarded to the Customer by post, fax or email.
- 4.2 The Customer shall be deemed to have accepted the Supplier's Equipment if within forty-eight (48) hours of receipt of the Handover Document the Customer has not notified LinchPin Networks or any defects in the Supplier's Equipment.
- 4.3 The Customer must ensure that any equipment connected to or used with the service must be connected and used in accordance with any instructions, safety or security procedures applicable to the use of that equipment.
- 4.4 The Customer must ensure that any equipment that is attached (directly or indirectly) to the service is technically compatible with the service and approved for that purpose under any relevant legislation.
- 4.5 The Customer shall use its reasonable endeavours to procure that LinchPin Networks is not in breach of any term of the Supplier's Conditions in so far as they relate to the possession and use of the Supplier's Equipment by the Customer during the life of the Contract.
- 4.6 In the event that LinchPin Networks is unable to provide the Specified Service as a result of any action or omission by the Customer in relation to the possession or use of the Supplier's Equipment which could reasonably be considered to have caused a hazard to the Specified Service then LinchPin Networks shall be entitled to suspend the Specified Service by giving reasonable notice until such time as LinchPin Networks thinks fit during which suspension the Customer shall continue to pay the full amount due under the Contract and at the end of such suspension the Customer shall pay to LinchPin Networks the Reconnection Fee.
- 4.7 The Customer shall provide the Supplier with all reasonable access to the Supplier's Equipment for the purposes of maintenance as the Supplier may reasonably require upon the Supplier serving on the Customer reasonable notice.

### 5 Warranty

- 5.1 LinchPin Networks /LinchPin Networks Supplier warrants that it will provide the Specified Service with all the reasonable skill and care of a competent telecommunications service provider and in accordance with Industry Best Practice.



5.2 LinchPin Networks agrees it will use all reasonable endeavours to provide the Specified Service by utilising all current internal support functions.

## 6 Limitation of Liability

6.1 LinchPin Networks shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, or arising from their late arrival or non-arrival, or any other fault of the Customer.

6.2 LinchPin Networks /LinchPin Networks Supplier and the Customer accept unlimited liability for death or personal injury resulting from their negligence.

6.3 LinchPin Networks and the Customer are not liable to each other either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data.

6.4 The liability of LinchPin Networks in contract, tort, (including negligence) or otherwise in relation to this Contract is limited to one million pounds Sterling (£1,000,000) for any one incident or series of related incidents and to two million pounds Sterling (£2,000,000) for all incidents in any period of 12 months.

6.5 Neither party shall be deemed to be in breach of the Contract by reason of any event set out in Clause 8.7.

## 7 Termination

7.1 The Contract shall come into force on the date set out in the Specification Sheet and shall continue in force for the duration of the Initial Term and thereafter unless or until terminated by either party giving relevant notice as per the Supplier's Conditions for that service.

7.2 In the event of the Customer terminating the Contract other than under Clause 7.3 the Customer shall be liable for early termination fees in accordance with the Supplier's early termination fees published in its then current price list. For the avoidance of doubt, in the event that this Contract is terminated under the provisions of Clause 7.1 (in accordance with the Supplier's Conditions) or 8.7 (as a result of a force majeure event) the Customer shall not be required to pay any sums for early termination.

7.3 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 14 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed (other than for the purposes of bona fide reconstruction or amalgamation).

7.4 In the event of service of notice of termination by either party for any reason LinchPin Networks shall invoice Customer for all sums due under this Contract and the Customer shall use all reasonable endeavours to promptly facilitate the return of the Supplier's Equipment to the Supplier.

## 8 General

8.1 The terms set out in the Contract constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

8.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

8.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

8.5 LinchPin Networks shall use all reasonable endeavours to ensure that the Customer is notified of enhancements and new technologies to products where by the Customer could gain benefit by the introduction of such products.

8.6 During this Contract and for a period of twelve (12) months following the termination of the Contract (for whatever reason) neither party shall employ or engage directly or indirectly (without the other party's prior written agreement) nor make or seek to make any offer of employment or engagement to any of the other party's staff, including its sub-contractors, who have dealt with the party in the course of the negotiation, conclusion and performance of the Contract.

8.7 Neither party shall be liable for any breach of the Contract caused directly or indirectly by anything outside its reasonable control including, without limitation to the generality of the foregoing, war, hostilities, government action requirements or regulations, breakdown, delays in transportation, inability to obtain supplies, any form of labour dispute, fire, flood or act of God, provided that the party has promptly given written notice of such occurrence to the other party. If a default due to an event of force majeure shall continue in force for more than 30 days, then the party not in default shall be entitled to terminate the Contract by notice to the other party.

8.8 The Contract shall not be construed as creating a relationship of employer and employee, principal and agent or a partnership or joint venture between the parties.

8.9 Neither party to the Contract shall disclose to any third party details of the Contract without the prior written consent of the other party save that LinchPin Networks shall be permitted to disclose details to the Supplier for the purposes of discharging its obligations under the Contract and for the same purposes both LinchPin Networks and the Customer shall each be permitted to disclose details to their respective subsidiaries, holding company or subsidiaries of such holding company.



- 8.10 LinchPin Networks and the Customer can transfer this Contract, with the written consent of the other.
- 8.11 No term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it
- 8.12 The construction, validity and performance of this Contract shall be governed by English Law and subject to the non-exclusive jurisdiction of the courts of England.