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**MARLEY COMMUNICATIONS LIMITED**  
**STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES**

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**IMPORTANT NOTE:**

The Customer's attention is particularly drawn to the provisions of:

- **Clause 9 (Contractual limitation period)**,
- **Clause 16 (Limitation of liability)**, and
- **Clause 20.1 (Entire agreement) below.**

**1. Interpretation and definitions**

The following definitions and rules of interpretation apply throughout these Conditions:

**1.1 Definitions:**

**Additional Costs:** has the meaning given in clause 11.5 below.

**Alleged Defects:** has the meaning given in clause 9.1 below.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Change of Control:** means, in relation to a body corporate, an event that occurs if a person who Controls such a body ceases to do so or if another person acquires Control of it.

**Commencement Date:** has the meaning given in clause 2.2.

**Complaints Period:** has the meaning given in clause 9.2 below.

**Conditions:** these terms and conditions as amended from time to time in accordance with the provisions herein below.

**Contract:** the contract entered into between the Supplier and the Customer for the supply of Goods or Services, or Goods and Services, in accordance with these Conditions.

**Control:** means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person: (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate, or (b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate; and **Controls** shall be interpreted accordingly.

**CPI:** the Consumer Prices Index published by the Office for National Statistics.

**Customer:** the person who orders the Goods or Services or Goods and Services from the Supplier under the Contract.

**Customer Default:** has the meaning given in clause 10.2 below.

**Customer's Premises:** the Customer's premises, office accommodation and other facilities, to which Goods are to be delivered and/or at which Services are to be or are supplied pursuant to the Contract.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and "UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Deliverables:** the deliverables (whether Goods or Services), if any, to be supplied by the Supplier for the Customer, and specified in the Order.

**Delivery Date:** in respect of Goods, has the meaning given to it in clause 4.3 below, and in respect of Services, has the meaning given to it in clause 7.2 below.

**Delivery Location:** the location specified in clause 4.1 below at which the delivery (or collection, as applicable) of the Goods is to take place.

**Due Date:** has the meaning given in clause 12.3 below.

**Enforcement Costs:** has the meaning given in clause 13.1 below.

**Force Majeure Event:** has the meaning given to it in clause 20.2 below.

**Goods:** the goods (or any instalment or part of them), if any, to be delivered by the Supplier to or for the Customer, under the Contract.

**Goods Specification:** any drawings, plans, descriptions, and/or other specifications, in respect of any Goods, set out in writing in the Order or otherwise agreed between the parties in writing.

**High Inflation Periods:** any period or periods of time in which the last published monthly level of either the CPI or of the RPI shows an increase of more than 15% (fifteen percent) in the same index over the preceding 12-month period.

**Insolvency Event:** means, in respect of any given party to the Contract (the "Party"), any of the following events: (a) the Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or intimates that it is experiencing financial difficulties; (b) the Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that Party with one or more other companies or the solvent reconstruction of that Party; (c) the Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the bankruptcy, insolvency, winding-up, administration and/or receivership of that Party or any of its assets; (e) the Party convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any

documents are filed with the court for the appointment of an administrator in respect of the Party, notice of intention to appoint an administrator is given by the Party or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Party or for the granting of an administration order in respect of the Party, or any proceedings are commenced relating to the insolvency or possible insolvency of the Party; (f) any event occurs, or proceeding is taken, with respect to that Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the foregoing events; (g) that Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (h) that Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the Contract or perform its obligations thereunder is in jeopardy.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use disclose and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Licence Fee:** has the meaning given in clause 11.3 below.

**Low Inflation Periods:** any period of time other than those falling in High Inflation Periods.

**Order:** the Customer's order for the supply of Goods or Services or Goods and Services that is accepted by the Supplier in entering into the Contract, or that is expressly accepted by the Supplier in writing thereafter, whether placed by way of the Customer's own purchase order form or otherwise, or by way of the Customer's acceptance of the Supplier's quotation, as the case may be.

**Payment Processing Fees:** has the meaning given in clause 11.4 below.

**Porting Charge:** has the meaning given in clause 8.2 below.

**Porting Charge Principles:** has the meaning given in clause 8.2 below.

**Relevant Liabilities:** has the meaning given in clause 16.2 below.

**Relevant Notice Period:** has the meaning given in clause 16.5 below.

**Relevant Number:** has the meaning given in clause 8.1 below.

**Relevant Request:** has the meaning given in clause 8.1 below.

**Representatives:** in relation to a party: its directors, officers, employees, agents, contractors, and subcontractors.

**RPI:** the Retail Prices Index (that is, for the avoidance of doubt, the RPI All Items Index) published by the Office for National Statistics.

**Service Level Agreement:** any service level agreement (an “SLA”) made between the Supplier and Customer, other than the Contract, under which terms are agreed between the Supplier and Customer for or in respect of any Services to be supplied by the Supplier to the Customer.

**Services:** the services to be supplied by the Supplier for the Customer under the Contract, as specified in the Services Specification.

**Services Specification:** the description or specification for the Services set out in writing in the Order or otherwise agreed between the parties in writing.

**Subscription Fees:** has the meaning given in clause 11.3 below.

**Subscription Services:** any Services that the Supplier provides or agrees to provide under or in connection with the Contract on an ongoing or rolling basis (irrespective of the terms if any upon which the said Services may be withdrawn or terminated).

**Supplier:** Marley Communications Limited, a company incorporated in England under company number 08212573.

**Supplier’s Confidential Information:** any information concerning the business, assets, affairs, customers, clients, suppliers, or Representatives, of the Supplier, including any business plans, prices, stocks, business methods, and any other information that a reasonable person coming into possession of the information would be likely to regard as being confidential to the Supplier, including any information expressly marked or stated to be confidential, but excluding any information that is clearly and demonstrably already known by the Customer or already in the public domain at the time that it is first acquired by the Customer or that thereafter enters the public domain (other than by reason of any breach of confidence or breach of the Contract or of these Conditions by the Customer).

**Supplier Materials:** has the meaning given in clause 10.1(i).

**Supplier’s Total Liability:** has the meaning given in clause 16.2 below.

**Telecoms Regulatory Body:** means Ofcom, the Competition Commission, the Competition Appeal Tribunal, the Office of the Information Commissioner, the Office of the Deputy Prime Minister, the Interception of Communications Commissioner, the Home Office, the Office of Fair Trading, OTELO, the Advertising Standards Authority, the Independent Committee for the Supervision of Standards of Telephone Information Services, the Internet Watch Foundation, all Trading Standards Authorities, and any other governmental or regulatory authorities having authority to make rules or regulations in relation to charges levied for number porting or services connected with number porting, together with any successor body or bodies in the United Kingdom.

**VAT:** means value added tax, as well as any customs, excise, sales taxes, or levies, of a similar nature, which are from time to time imposed by any competent fiscal authority.

## 1.2 Interpretation:

- (a) Any reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) Any reference to a **party** to the Contract includes its personal representatives, successors, and permitted assigns.
- (c) Any reference to **writing** or **written** includes email, text messages, and other similar electronic communications.
- (d) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (e) Any words following the terms **including, include, in particular, for example,** or any similar expression, shall be construed as illustrative only and not as being comprehensive or exclusive, and shall not limit or confine in any way the scope or sense of the words, description, definition, phrase or term preceding those terms.
- (f) Any reference to the “supply” of any services, or to any services being “supplied”, shall include the provision and performance of those services.
- (g) Any reference to a gender includes all genders.
- (h) The headings used in these Conditions are for convenience only and shall have no effect upon the interpretation of any of the terms or conditions herein.
- (i) Words imparting the singular shall include the plural and vice versa.
- (j) (i) References to clauses and Schedules are to the clauses and Schedules of these Conditions, and references to paragraphs are to paragraphs of the relevant Schedule. (ii) Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions or of the Contract.
- (k) (i) The Schedules (if any) form part of these Conditions and of the Contract and shall have effect as if set out in full in the body of these Conditions. (ii) Save and to the extent otherwise strictly required by the context, any reference to these Conditions and/or to the Contract includes the Schedules. (iii) In the event of any inconsistency between the provisions of any Schedule and those of the Conditions and/or Contract, the provisions of the Conditions and/or Contract (as applicable) shall prevail.

## 2. Basis of contract

- 2.1 The Order shall be deemed to constitute an offer by the Customer to enter into a Contract incorporating these Conditions and to purchase Goods or Services, or Goods

and Services (as the case may be), from the Supplier in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted by the Supplier, and the Contract shall only be deemed to be entered into, when the Supplier issues written acceptance of the Order to the Customer, or, if earlier, on the date when the Supplier first begins to supply the ordered Goods or Services to the Customer pursuant to the Order, or issues the Customer with an invoice in respect of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, illustrations, photographs, descriptive matter, sales literature, websites, webpages, price lists, marketing or advertising materials, and any other documents published or otherwise issued by the Supplier (including any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures, websites or webpages), are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services indicated, referred to, depicted or described, in them, and shall not be binding on the Supplier, shall not form part of the Contract, and shall not have any contractual force or effect.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing, in each case if and to the maximum extent permitted by law.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and in any event shall be deemed to be valid for only **21 days** ,from its date of issue.
- 2.6 For the avoidance of doubt, all of these Conditions shall apply to the supply of both Goods and Services except where application to only one or the other is specified herein.
- 2.7 The Customer waives any right it might otherwise have to rely upon any term endorsed upon, delivered with, or contained (whether expressly, impliedly, or by reference), in any documents of the Customer, or any documents modified by the Customer or any of its Representatives, that are inconsistent with these Conditions.
- 2.8 Any typographical, clerical or other accidental errors or omissions in any documents or materials published or issued by the Supplier shall be subject to correction by the Supplier at any time without any liability on the part of the Supplier.
- 2.9 (a) The Supplier is not obliged to accept orders from the Customer or any prospective Customer who has not supplied the Supplier with references satisfactory to the Supplier. (b) If at any time the Supplier is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event the Supplier shall be entitled, notwithstanding any other provisions of the Contract or these Conditions, to withhold and refrain from delivering or supplying any further Goods or Services other than (i)

on the basis that the same are paid for in full and in advance by way of bank transfer in cleared funds and (ii) on the condition that any and all other amounts that may be owed by the Customer to the Supplier are fully paid to the Supplier.

### **3. Goods: general**

- 3.1 The specification for the Goods shall be that set out in the Supplier's sales documentation unless and to the extent varied expressly in writing in the Order (if and to the extent that such variations are accepted by the Supplier).
- 3.2 (a) The Goods will only be supplied in the minimum units thereof stated in the Supplier's price list or in multiples of those units. (b) Orders received for quantities other than these will be adjusted accordingly, rounding up to the nearest unit.
- 3.3 The Supplier reserves the right to make any changes in the specification of the Goods (even after accepting an Order for them) which are or may in the Supplier's opinion reasonably be required in order to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance, or which are within the scope of such variations that are generally regarded as being acceptable within the trade in respect of such goods.
- 3.4 (a) No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier. (b) Without prejudice to the foregoing, and unless otherwise agreed in writing, the Customer shall indemnify the Supplier in full against all and any loss (including loss of profit, costs of all labour and materials used, and all other costs), damages, charges, and expenses, incurred by the Supplier as a result of such cancellation.
- 3.5 If and to the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of any third party's Intellectual Property Rights arising out of or in connection with (a) any manufacture and/or supply of the Goods in question by the Supplier, or (b) any other use by the Supplier of the Goods Specification. This clause 3.5 shall survive termination of the Contract.
- 3.6 (a) The Supplier reserves the right to amend any Goods Specification supplied by the Customer. (b) The Supplier shall be entitled to make such amendments as and to the extent that it sees fit, if it regards the amendments as being required by any applicable statutory or regulatory requirement, or as being reasonable or advisable to make for

any other reason and whether or not for the benefit of the Customer. (c) In such event, the Supplier shall notify the Customer of the amendment.

#### **4. Goods: delivery**

- 4.1 Delivery of the Goods shall be made by the Supplier delivering the Goods to the place in the United Kingdom agreed between the parties in writing (whether in the quotation, order confirmation, sales invoice, or otherwise), and if no place of delivery is so specified, by the Customer collecting the Goods at the Supplier's premises for the collection of the Goods in question at any time (upon reasonable notice being given by the Customer of the intended date and time of collection, which must be a Business Day and within ordinary business hours) no sooner than 3 (three) Business Days after the Supplier has notified the Customer that the Goods are ready for collection.
- 4.2 If the Customer has any requirements for storage of the Goods prior to delivery, or mode or method of delivery, or if the Customer wishes the Supplier to take any steps to protect against damage to fragile Goods, then these requirements MUST be agreed in writing between the parties prior to delivery, in default of which the Supplier shall not be obliged to take any special or unusual steps for the storage or protection of the Goods whatsoever, which shall take place entirely at the Customer's risk.
- 4.3 (a) Any delivery date quoted by the Supplier or agreed between the parties for the delivery of the Goods (the **Delivery Date**) shall be approximate only and the time for delivery shall not be of the essence unless otherwise expressly agreed between the parties in writing. (b) The Goods may be delivered by the Supplier in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 4.4 (a) For the avoidance of doubt, the Supplier shall not be liable for any delay in delivery of, or failure to deliver, the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply or delivery of the Goods. (b) In any event, if the Supplier fails to deliver the Goods by a contractually required time and date, its liability shall be limited to the cost of replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.5 If the Customer fails to take or accept delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Supplier shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then, notwithstanding the provisions of clause 6.1 below, risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place, and the Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.
- 4.6 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location (of, if collected by the Customer, upon the loading of the



Goods for removal from the Delivery Location by the Customer or any of its Representatives).

- 4.7 If the Customer fails to take or accept delivery of the Goods within 10 (ten) Business Days of the Supplier notifying the Customer that the Goods are ready for delivery or collection (as the case may be), then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract (including these Conditions) in respect of the Goods, then:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 10th (tenth) Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until actual delivery or collection takes place and shall be entitled to charge the Customer for all related costs and expenses (including the costs of storage and insurance).
- 4.8 If 20 (twenty) Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery or collection (as the case may be) the Customer has not taken or accepted actual delivery of them, or collected them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 If the Supplier fails to deliver the Goods on the Delivery Date for reasons outside the Supplier's reasonable control or by reason of the Customer's own fault, then:
- (a) if the Supplier delivers the Goods on any date and at any time thereafter the Supplier shall have no liability in respect of such late delivery; or
  - (b) provided that delivery has not already been effected and the Goods have not already been collected by the Customer, and provided that the failure to deliver was not caused by the Customer, and provided that at least 20 (twenty) Business Days have passed since the Delivery Date: the Customer may cancel the Order in respect of those Goods in question by giving not less than 14 (fourteen) Business Days' notice to the Supplier, and the Supplier's liability for the failure to deliver shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of equivalent goods to those not delivered over the price of the Goods not delivered.
- 4.10 Unless otherwise agreed in writing between the parties, in the event that the Supplier delivers up to and including 10% (ten percent) more or less than the quantity of Goods ordered, then the Customer may not reject the delivery, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered (or, if earlier, upon discovery and notice from the Supplier of the error), the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.11 (a) The Supplier may at its discretion deliver the Goods by instalments, in which event they shall be invoiced and paid for separately and each instalment shall constitute a

separate contract. (b) Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Goods: defective goods**

5.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as “condition and contents unknown”, the Customer gives written notice of such defect to the Supplier within 3 (three) Business Days of such delivery, the Supplier shall at its option:

- (a) replace the defective Goods within 7 (seven) Business Days of receiving the Customer’s notice; or
- (b) refund to the Customer the price for those Goods (or parts thereof, as appropriate) which are defective;

but the Supplier shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as set out above.

5.2 (a) No Goods may be returned to the Supplier without the prior agreement in writing of the Supplier. (b) Subject thereto, any Goods returned which the Supplier is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Supplier’s sole discretion the Supplier shall refund or credit to the Customer the price of such defective Goods but the Supplier shall have no further liability to the Customer.

5.3 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Supplier’s instructions (whether given orally or in writing), misuse or alteration of the Goods without the Supplier’s prior approval, or any use handling or storage of any Goods other than in accordance with all applicable legal and regulatory requirements and guidelines and in accordance with best practice for such goods, or any other act or omission on the part of the Customer, its employees or agents or any third party, or any modification to the Goods or to the Goods Specification made by the Supplier in accordance with clause 3.6 above.

5.4 Goods, other than defective Goods returned under clauses 5.1 or 5.2 above, returned by the Customer and accepted by the Supplier may be credited to the Customer at the Supplier’s sole discretion and without any obligation on the part of the Supplier.

5.5 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

5.6 The Customer shall be solely and exclusively responsible for ensuring that, any use or sale of the Goods by the Customer is in compliance with all applicable statutory

requirements and that handling and sale of the Goods by the Customer is carried out in accordance with directions given by the Supplier or any competent governmental or regulatory authority, and the Customer will indemnify the Supplier against any liability loss or damage which the Supplier might suffer as a result of the Customer's failure to comply with this clause 5.6.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier as if they were Goods delivered pursuant to the Contract.

## **6. Goods: title and risk**

6.1 Risk of damage to or loss of the Goods shall pass to the Customer at:

- (a) in the case of Goods to be delivered at the Supplier's premises, the time when the Supplier notifies the Customer that the Goods are available for collection;
- (b) in the case of Goods to be delivered otherwise than at the Supplier's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods; or
- (c) in the case of Goods being installed by the Supplier, the time that the Supplier notifies the Customer that the installation is complete.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title to the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods.

6.3 Notwithstanding clause 6.2 above, legal and beneficial title of the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by the Supplier and the Customer has repaid all moneys owed to the Supplier, regardless of how such indebtedness arose.

6.4 Until payment has been made to the Supplier in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall: (a) retain possession of the Goods and shall possess them as bailee for the Supplier; (b) store the Goods separately from all other goods held by the Customer and shall ensure that they are identifiable as being supplied by the Supplier; (c) keep and maintain the Goods in satisfactory condition and store them in an appropriate environment; (d) fully insure the Goods against all reasonable risks; (e) notify the Supplier forthwith in the event that an Insolvency Event takes place or is likely to take place in respect of the Customer; (f) provide the Supplier in writing with such information relating to the Goods, and to the Supplier's ongoing financial position, as the Supplier may from time to time require.

- 6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 6.6 The Supplier reserves the right to repossess any Goods in which the Supplier retains title without notice. The Customer irrevocably authorises the Supplier to enter the Customer's Premises during normal business hours for the purpose of repossessing the Goods in which the Supplier retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of clause 6.4.
- 6.7 The Customer's right, if any, to possession of the Goods in which the Supplier maintains legal and beneficial title, shall terminate if:
- (a) the Customer commits or permits any material breach of its obligations under the Contract or these Conditions; and/or
  - (b) an Insolvency Event takes place in relation to the Customer.
- 6.8 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to, and the Customer shall, deliver up to the Supplier at the Customer's own cost and expense all Goods in its possession that have not already been resold, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, the Supplier shall be entitled to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. Services

- 7.1 With effect from the Commencement Date the Supplier shall proceed to supply the agreed Services, in accordance with the Order, Services Specification, and Contract, in all material respects.
- 7.2 (a) The Supplier shall use reasonable endeavours to meet any performance dates and times for the delivery of the Services that may be specified in the Order or Services Specification (the **Delivery Date**). (b) The Delivery Date in respect of any given Services shall be deemed to be an estimate or guideline only, and any such dates and times shall not be of the essence for the performance of the Services. (c) If the Supplier fails to supply any Services by the applicable Delivery Date for reasons outside the Supplier's reasonable control or by reason of the Customer's own fault, then:
- (i) if the Supplier supplies the Services on any date and at any time thereafter the Supplier shall have no liability in respect of such late supply; or
  - (ii) provided that the supply of the Services in question has not already taken place, and provided that the failure to supply was not caused by the Customer, and provided that at least 20 (twenty) Business Days have passed since the Delivery Date: the Customer may cancel the Order in respect of those Services in question by giving not less than 14 (fourteen) Business Days' notice to the

Supplier, and the Supplier's liability for the failure to deliver shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of equivalent services to those not supplied over the price of the Services not supplied.

- 7.3 (a) The Supplier reserves the right and shall be entitled to amend the Services Specification if necessary or in its opinion it is reasonable or advisable to do so in order to comply with any applicable law or regulatory requirement, or in order to bring the Services Specification into accordance with standards that are customary in the trade, or if the amendment will not materially affect the nature or quality of the Services. (b) In the event of any such amendment being made by the Supplier, the Supplier shall notify the Customer in writing of the amendment, but for the avoidance of doubt, no failure or delay by the Supplier to provide such notice shall invalidate the amendment or prevent the amendment from taking effect.
- 7.4 (a) The Services shall be supplied by the Supplier at such location as may be specified in the Order or Services Specification or otherwise agreed between the parties in writing. (b) If no location is specified or agreed, the Supplier shall be entitled to refuse to supply any of the Services in question if, in its sole discretion, it does not wish to supply the Services at the place proposed by the Customer for performance.
- 7.5 In the event that the parties enter into a Service Level Agreement in respect of any Services, these Conditions shall continue to apply to and in respect of the Services supplied or to be supplied pursuant to the Contract, unless and to the extent otherwise expressly agreed in the Service Level Agreement.
- 7.6 The Customer understands, acknowledges and agrees that there is no guarantee or warranty, and that the Supplier provides no guarantee or warranty, that the Services will be uninterrupted or error free.
- 7.7 The Customer understands, acknowledges and agrees that any and all equipment supplied to the Customer or its Representatives by the Supplier or its Representatives in connection with the Contract and/or for the purpose of the supplying any of the Services to the Customer shall remain the property of the Supplier or Representatives in question, and not the Customer, and shall be kept safe at its premises and in good condition by the Customer, and shall be returned to the Supplier by the Customer upon termination of the Contract, unless and to the extent otherwise agreed between the parties in writing.
- 7.8 In the event of an emergency requiring immediate action, the Supplier may enter and undertake immediate emergency repairs at the Customer's Premises upon reasonable notice during Business Hours, or if necessary, without notice and outside Business Hours provided that it promptly informs the Customer of the nature of the emergency and of the actions being taken.

- 7.9 (a) In the event that the Services include the provision and/or operation of any computer or telecommunications network, then unless and to the extent otherwise agreed in writing between them, the Supplier shall be the owner and shall retain ownership of, and the Customer shall never at any time have any title to, the Network Data. (b) For the purposes of this clause, "Network Data" means any data that is created or used by the Supplier for the purposes of providing and/or operating the network in question.

## 8. Number porting

- 8.1 If the Supplier is providing any telephone number to the Customer and receives from the Customer a request to port that number (the **Relevant Number**) to another provider (a **Relevant Request**), the Supplier shall not deliberately or unreasonably delay in complying with that request, shall (if requested to do so by the Customer) inform the Customer when porting takes place, and shall comply with all applicable legal and regulatory requirements binding upon the Supplier in connection with such a request.
- 8.2 The Supplier may charge the Customer for porting the Relevant Number and for performing any ancillary services (such as activating the Relevant Number) pursuant to the Relevant Request (the **Porting Charge**), but any such charge shall be made in accordance with the following principles (the **Porting Charge Principles**):
- (a) Subject always to the requirement of reasonableness, the Porting Charge shall be costs-orientated and based on the incremental costs of providing portability unless: (i) the Supplier and Customer have agreed in writing other charges between them; and/or (ii) a Telecoms Regulatory Body has directed that another basis for such charges should be used.
  - (b) The Supplier shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs. For the purpose of this clause, "System Set-Up Costs" means costs of the Supplier incurred: (i) in the course of making network and system modification, configuration and reconfiguration, including adapting or replacing any software; (ii) in the course of testing functionality within the Supplier's network or any recipient provider's network; or (iii) in establishing the technical and administrative capability to provide portability. For the purpose of this clause, "Additional Conveyance Costs" means any costs incurred by the Supplier associated with resources used in effecting the switch-processing required to set up each ported call and providing the switch and transmission capacity for any part of the duration of each ported call, additional to the costs of conveyance of non-porting calls from the Supplier's network to the recipient provider's network.
  - (c) The Supplier shall make no charge or annual fee for ongoing costs relating to registration of a ported telephone number or an end user of the number.

- (d) Porting Charges levied by the Supplier shall be based on the reasonable costs incurred by it, including administrative costs and employee time costs, in providing portability with respect to each telephone number.
- 8.3 If, immediately prior to the Commencement Date, the Porting Charge is published and accessible by the Customer on the Supplier's website, or has otherwise been notified to the Customer in writing, or if the parties agree in writing the level of the Porting Charge between them (for example by way of an accepted Order, or Supplier's quotation that is accepted, and that specifies the level of the Porting Charge), then the Porting Charge shall be deemed to be reasonable and to have been made in accordance with the Porting Charge Principles.
- 8.4 For the avoidance of doubt, Porting Charges may be increased by the Supplier under and in accordance with the provisions of clause 11 below in the same way as any of the Supplier's other prices or charges under the Contract, and a Porting Charge shall not, by reason of any such increase, be deemed unreasonable or to have been made otherwise than in accordance with the Porting Charge Principles.
- 9. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 9  
Contractual limitation period for identifying defects**
- 9.1 Any Goods delivered or Services supplied to the Customer or its Representatives by the Supplier or its Representatives shall be deemed in the case of Goods to be of satisfactory quality, and in the case of Services to be satisfactory and to have been supplied satisfactorily and with reasonable care and skill, unless and to the extent that the Customer gives notice in writing to the Supplier within the Complaints Period, informing the Supplier of the respects in which the Goods or Services in question are alleged to be, in the case of Goods, defective, or, in the case of Services, to be unsatisfactory and/or to have been provided unsatisfactorily and/or without reasonable care and skill as the case may be (the **Alleged Defects**).
- 9.2 For the purposes of this clause 9, the "**Complaints Period**" shall mean the period of 20 (twenty) Business Days running from either the delivery of the Goods or the completion of the supply of the Services in question, or from the date upon which the Customer first knew, or upon which it ought or could reasonably have come to have first known, of the Alleged Defects in question, whichever is the later date.
- 9.3 This clause 9 shall survive termination or expiry of the Contract.
- 10. Customer's obligations**
- 10.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in either or both the Services Specification and the Goods Specification are complete and accurate;

- (b) provide the Supplier and its Representatives with reasonable co-operation in all matters relating to the Goods and/or Services and/or to the performance or proposed performance of any obligations under the Contract or these Conditions;
- (c) provide the Supplier and its Representatives with such unfettered access to the Customer's Premises as may reasonably be required for the supply of the Services and for the delivery of the Goods;
- (d) shall prepare and maintain all premises, accommodation and facilities (other than the Supplier's own premises or any premises under the Supplier's sole control) at or from which the Services are to be supplied, to the standard necessary to enable the Services to be properly, safely and lawfully supplied, and shall ensure the Customer's Premises are safe and prepared appropriately for the supply and delivery to take place, in advance of and throughout the times at and during which the supply of the Services is due to and does in fact take place;;
- (e) if requested by the Supplier, appoint a manager for the Contract and/or Services, with authority to contractually sign for and on behalf of, make binding commitments for, and bind, the Customer in relation to any matters relating to the Contract, these Conditions, any Order, Goods, Goods Specification, Services, and/or Services Specification;
- (f) (i) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and deliver the Goods, and shall (ii) ensure that all such information is complete and accurate in all material respects;
- (g) obtain and maintain all necessary or advisable licences, permissions and consents which may be required for the Services to be supplied, and shall do so before the date on which the supply of the Services is due to start;
- (h) comply at all times with all applicable laws, including health and safety laws;
- (i) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's Premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (j) take regular backups of all of its computer systems and data and shall take all reasonable steps to protect the same (including immediately before any Services are supplied in connection with, or that could in any way impact upon, the same);
- (k) comply with any and all additional obligations that may be set out in any Order, Goods Specification and/or Services Specification, and/or that may otherwise be agreed between the parties in writing;
- (l) not knowingly use any Services, or permit them to be used, for any illegal, immoral, indecent, or unlawful purpose, in any way that may infringe any



Intellectual Property Rights, or in any way that may be in breach of any terms or conditions of or contractual obligations owed to the Supplier or any third party, or any obligation of confidence, privacy, or any other rights, or in any way that may bring the Supplier or any of its Representatives into disrepute or that could in any way damage or undermine the reputation or goodwill of the Supplier or any of its Representatives;

- (m) not knowingly use any Services, or permit them to be used, in any way that contravenes any reasonable instructions given or provided to the Customer by the Supplier in respect of the use of the Services or any similar such services;
- (n) consent to the Supplier changing the nature of the Services from time to time as the Supplier sees fit, provided that there is no material impact on the Customer.

10.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**) then:

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall be entitled to suspend supply of the Services and to refrain from delivering any Goods until the Customer remedies the Customer Default (and the time for performing those obligations under the Contract shall be extended by the period of the Customer's Default), and the Supplier shall be entitled to rely on the Customer Default to relieve it (the Supplier) from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10.3 The Customer shall indemnify the Supplier against any and all damages, costs, claims, and expenses, that may be suffered by the Supplier by reason of any loss or damage to any equipment or property (including that of third parties) caused by the Customer and/or any of its Representatives.

## **11. Prices, Charges, and Additional Costs**

11.1 Subject to all of the other provisions of these Conditions, including clauses 11.4 (Price increases), 11.5 (Additional Costs), and 11.7 (VAT) below, the price in respect of any Goods or Services shall be:

- (a) such price as may be agreed in writing between the parties; or in default of written agreement shall be:

- (b) the price set out in the Supplier's most recent quote or invoice (to the Customer) preceding the supply to the Customer of the Goods or Services in question; or in default of any such quote or invoice having been supplied to the Customer prior to the supply of the Goods or Services in question, shall be:
  - (c) the price set out in the Supplier's published price list (if any) as at the date of delivery/supply in respect of such Goods or Services; or in the absence of such a list having been published or setting out a price in respect of such Goods or Services, shall be:
  - (d) a reasonable price in all of the circumstances (which, in the case of Services, shall be chargeable on a time and materials basis, or in the case of Subscription Services as Subscription Fees, as set out below).
- 11.2 Where the price (also referred to herein as "charges") for any Services is to be calculated under the Contract on a time and materials basis, then unless and to the extent otherwise agreed in writing between the parties (and subject to all of the other provisions of these Conditions, including clauses 11.4 (Price increases), 11.5 (Additional Costs), and 11.7 (VAT) below):
- (a) the charges shall be calculated in accordance with the Supplier's hourly and daily fee rates, as set out in its current price list as at the date of the Contract;
  - (b) the Supplier's daily fee rates for each individual person are calculated on the basis of a seven-hour day from 9am to 12noon and from 1pm to 5pm worked on a Business Day;
  - (c) the Supplier shall be entitled to charge an unsociable-hours rate in respect of any hours or days that it is required to work that are outside Business Hours on Business Days, and that rate shall be either the rate published by the Supplier on its current price list as at the date of the Contract or, if no such list is published or no such rate is published on that list as at that date, then that rate shall be double the Supplier's ordinary hourly or daily rate as applicable.
- 11.3 Unless and to the extent otherwise agreed in writing between the parties: in respect of any Subscription Services, the Supplier shall be entitled to charge the following fees on the following basis (**Subscription Fees**):
- (a) a reasonable fee, calculated by reference to the number of the Customer's end-users subscribed to the Services in question multiplied by the individual licence fee chargeable to the Customer by the Supplier in respect of each such end-user (a **Licence Fee**);
  - (b) each Licence Fee shall be a reasonable fee, taking into account the Supplier's costs and expenses in providing the Services in question, apportioned reasonably across all of the end-users in question;
  - (c) for the avoidance of doubt, any Subscription Fees and/or Licences Fees may be increased under clause 11.4 below in the same way as any of the Supplier's other prices or charges.

11.4 **Price increases.** The Supplier reserves the right, and shall be entitled, at any time, and from time to time, by giving notice to the Customer in writing (which may include giving notice by publishing the same on the Supplier's website), to increase its (the Supplier's) prices or charges in respect of any Goods or Services, including any prices or charges that have already been agreed between the parties or otherwise specified under or in connection with the Contract:

- (a) in order to reflect any increase in the cost to the Supplier of supplying the Goods or Services in question that takes place between the date that the price or charges were last specified, set or varied under the Contract and the date of the supply of the Goods or Services in question, that is due to:
  - (i) any factor that is beyond the Supplier's reasonable control (including by reason of any foreign exchange fluctuations, increases in taxes or duties, or insurance, or increases in any labour, materials or other manufacturing, supply or delivery costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the supply date(s) or any other aspects or any of the Services ordered, or the Goods Specification and/or Services Specification; and/or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure on the part of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Services; and/or
- (b) in line with the percentage increase in the CPI or RPI (whichever is greater) over the preceding 12-month period; provided that:
  - (i) during Low Inflation Periods, the Supplier shall not exercise this right under or in respect of the Contract in question unless at least 12 months have passed since the Supplier last did so (that is, since it last increased its prices or charges under the Contract, under this clause 11.4(b)); and
  - (ii) during High Inflation Periods, the Supplier shall not exercise this right under or in respect of the Contract in question unless at least one month has passed since the Supplier last did so (that is, since it last increased its prices or charges under the Contract, under this clause 11.4(b)).

11.5 **Payment Processing Fees:** (a) Unless and to the extent otherwise agreed between the parties in writing, the Supplier shall be entitled to charge and invoice the Customer reasonable processing, handling and administration fees in respect of any payments that are made by the Customer under or in connection with the Contract (including in connection with the supply of any Goods or Services thereunder) that are made otherwise than by way of direct debit (**Payment Processing Fees**). (b) Unless and to the extent otherwise agreed between the parties in writing, any agreed, quoted or listed prices, fees, or charges, shall be exclusive of any Payment Processing Fees. (c) If

the Payment Processing Fees in question were either (i) published and accessible by the Customer on the Supplier's website immediately prior to the Commencement Date, or or were (ii) otherwise notified to the Customer in writing at least 21 Business Days prior to the Customer's payment giving rise to the Payment Processing Fees, and in either case have not subsequently been increased by any more than permitted under clause 11.4 above, then the Payment Processing Fees shall be deemed to be reasonable. (d) For the avoidance of doubt, any Payment Processing Fees may be increased under clause 11.4 above in the same way as any of the Supplier's other prices or charges.

- 11.6 **Additional Costs:** Unless and to the extent otherwise agreed between the parties in writing, any agreed, quoted or listed prices shall be exclusive of: all costs or expenses of any packaging, postage, insurance, delivery, supply, and/or transport, of or connected with the supply of any Goods or Services, and of all costs or expenses reasonably incurred by the Supplier or its Representatives in supplying, or in connection with the supply of, any Services (including any reasonably incurred travelling expenses, hotel costs, subsistence and/or any associated expenses), and the cost of services provided by third parties, and of any materials, required by the Supplier for or in connection with the supply of any Services, (collectively, **Additional Costs**); and the Supplier shall be entitled to charge and invoice the Customer in respect of any and all such Additional Costs, unless and to the extent otherwise agreed in writing between the parties.
- 11.7 **VAT:** (a) Unless and to the extent otherwise expressly agreed or stated by the Supplier in writing, all amounts payable by the Customer under the Contract, and all prices and Costs referred to by the Supplier, are exclusive of any amounts in respect of VAT that may be chargeable from time to time. (b) Where any taxable supply for VAT purposes is made under the Contract to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.

## 12. Invoicing and payment

- 12.1 Unless otherwise agreed in writing, the Supplier may invoice the Customer on or at any time prior to or after completion of delivery or supply of the Goods or Services in question.
- 12.2 The Customer shall pay each invoice submitted by the Supplier, in full and in cleared funds by way of bank transfer into the Supplier's Bank Account, and shall do so by no later than the Due Date in respect of the invoice in question.
- 12.3 In the case of any given invoice, the **Due Date** in respect of that invoice shall mean whichever is the later of the following dates:
- (a) the date last agreed in writing between the parties, if any, for the payment of the invoice;

- (b) the date, if any, stipulated on the invoice, by which payment of the invoice should be made;
  - (c) the date falling 14 days after the date upon which the invoice is sent to the Customer.
- 12.4 Time for payment shall be of the essence of the Contract.
- 12.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction, or withholding, whatsoever (other than and to the extent that the same is strictly required by law).
- 12.6 **Direct debit.** (a) In respect of any sums that may be due to the Supplier, the Supplier shall be entitled to require the Customer to pay the same by way of direct debit. (b) In which event, the Customer shall provide the Supplier with valid, full, accurate, and up-to-date bank account details, shall authorise the Supplier and provide it with all reasonable co-operation as may be required in order to set-up a direct debit and bill such account at monthly intervals in respect of any sums that may be due to the Supplier, or as may otherwise be agreed in writing between the parties.

### 13. Customer default

- 13.1 **Late payment.** (a) If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any other remedies that the Supplier may have (whether under the Contract or in law or equity or otherwise howsoever), the Customer shall pay to the Supplier any and all fees, costs and expenses that the Supplier incurs in attempting to recover the sums owed by the Customer (including any legal fees, court costs, and disbursements, and including the costs of attempting to enforce any court orders, together with a reasonable amount to compensate the Supplier for its employees' and directors' time), and shall do so on a full indemnity basis, and shall do so forthwith upon the Supplier notifying the Customer of the amounts incurred (**Enforcement Costs**). (b) Interest shall accrue and be paid by the Customer in respect of any and all Enforcement Costs, in each case from the date that the same are incurred through until the date that the Supplier receives full reimbursement from the Customer in respect thereof.
- 13.2 **Interest.** (a) If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any other remedies that the Supplier may have, interest shall accrue and be paid by the Customer on the overdue amount from the due date until payment of the overdue amount, whether before or after judgment. (b) Any interest under clause 13.1 above or under this clause 13.2 shall accrue daily at the rate of 8% per annum above the Bank of England's base rate from time to time, but at 8% per annum during any period when the base rate is below 0%.

#### **14. Intellectual property rights**

- 14.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 14.2 The Customer grants (and if it is not able to grant itself shall procure the grant) to the Supplier and its Representatives, for the duration of the term of the Contract, a fully paid-up, non-exclusive, royalty-free, non-transferable, licence to use, copy, and modify, any materials provided by the Customer to any of them, for the purpose of supplying the Services to the Customer or otherwise performing the obligations of the Supplier or Representatives in question under or in connection with the Contract or these Conditions.
- 14.3 Any and all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned exclusively by the Supplier, including for the avoidance of doubt any Intellectual Property Rights in any materials jointly authored/developed by the Supplier and/or any of its Representatives on the one hand, and the Customer and/or any of its Representatives on the other.

#### **15. Data protection**

- 15.1 (a) Both parties will comply with all applicable requirements of the Data Protection Legislation. (b) This clause 15 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.2 Without prejudice to the generality of clause 15.1 above, if the Supplier and/or any of its Representatives (whether expressly or by implication, or in the course of carrying out any other obligations under or in connection with the Contract) is/are required to carry out any "processing" of any "personal data" (as those terms are understood under the Data Protection Legislation) under or in connection with the Contract or these Conditions, then the Customer shall be responsible for ensuring and procuring, and shall ensure and procure, that all necessary and appropriate consents are obtained from, and all necessary and appropriate notices are given to, the data subjects whose personal data is being or is to be processed, and that all such consents and notices are in place, so as to enable and to ensure that any and all such processing by the Supplier and its Representatives is carried out in full accordance and compliance with all applicable Data Protection Legislation.

#### **16. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 16 Limitation of liability**

- 16.1 Nothing in the Contract or in these Conditions limits or excludes any liability which cannot legally be limited, including liability for any of the following (and the provisions of this clause 16 shall be interpreted accordingly as being subject to this clause 16.1):

- (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of any of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) that cannot be legally limited or excluded; (d) defective products under the Consumer Protection Act 1987; and/or (e) any other liabilities which may not be excluded by law.
- 16.2 (a) The Supplier's total overall aggregate liability to the Customer in respect of all Relevant Liabilities (the **Supplier's Total Liability**), shall not exceed the total overall aggregate amount paid to the Supplier by the Customer under or in respect of the Contract (including these Conditions) from time to time. (b) The Supplier's Total Liability includes, for the avoidance of doubt, liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract (including these Conditions). (c) For the purposes of this clause 16.2, "**Relevant Liabilities**" shall mean all liabilities arising: (i) under or in connection with the Contract (including these Conditions) (whether in contract or in tort, in restitution, or by reason of any negligence, or otherwise); (ii) in connection with the supply by the Supplier, or any use by the Customer or any other person, of any Goods or Services; or (iii) in connection with any representation, statement, or tortious act or omission (including negligence), arising under or in connection with the Contract (including these Conditions).
- 16.3 The Supplier shall under no circumstances whatsoever be liable to the Customer, at all or to any extent, whether in contract or in tort (including negligence), or for breach of statutory duty, or otherwise howsoever, for or in respect of any, or any alleged: (a) special damages (even if the Supplier was aware of the circumstances in which such special damages could arise); (b) loss of profits; (c) loss of sales or business; (d) loss of agreements or contracts; (e) loss of anticipated savings; (f) loss of use or corruption of software, data, or information; (g) loss of business opportunities; (h) loss of or damage to goodwill; (i) loss that is the direct or indirect result of any act or omission on the part of the Customer; (j) loss that is the direct or indirect result of any act or omission on the part of any third party; (k) indirect or consequential loss.
- 16.4 The Supplier has given commitments as to compliance of the Services with relevant specifications in the Contract (including these Conditions), in view of which, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract and from these Conditions.
- 16.5 (a) Unless and to the extent that the Customer notifies the Supplier in writing that it (the Customer) intends to make a claim in respect of an event, and does so within the Relevant Notice Period, then the Supplier shall have no liability for that event. (b) In this clause 16.5, the "**Relevant Notice Period**" in respect of an event shall mean the period of **6 (six) months** starting on the date on which the Customer became aware, or (if earlier) the date on which the Customer ought reasonably to have become aware, of the event having occurred. (c) The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail. (d) In addition, clause 9 above

(deeming services to be satisfactory if no complaint is raised within the period specified therein) is expressly drawn to the Customer's attention.

- 16.6 Where any equipment or property of the Customer is to be repaired by the Supplier, the Supplier shall not be liable to the Customer for or in respect of any cosmetic or surface damage to the equipment or property or to any part or parts thereof.
- 16.7 (a) The parties agree that any Services supplied by the Supplier shall be supplied on the understanding and condition that the Customer shall, immediately before the commencement of the Supplier's supply of the Services in question, ensure that any and all of its computer systems and data (including any third party's systems or data that are held or controlled by the Customer, as well as the Customer's own systems and data) and that could in any way be affected by the supply of the Services in question are fully, properly, and professionally, backed-up and protected before the said supply commences. (b) Accordingly, the parties agree that the Supplier shall not be liable under any circumstances for any loss, damage, change, or alteration, to any such systems or data. (c) For the avoidance of doubt, if the Customer has or enters into a Service Level Agreement with the Supplier, the Customer shall remain solely responsible for the protection of any and all such systems and data, and this clause shall continue to apply in respect thereof, notwithstanding the provisions of any such Service Level Agreement, unless and to the extent expressly provided therein to the contrary.
- 16.8 This clause 16 shall survive termination of the Contract.

## **17. Termination**

- 17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 12 (twelve) months' written notice.
- 17.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 21 Business days after being notified in writing to do so; and/or
  - (b) an Insolvency Event takes place in respect of the other party.
- 17.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a Change of Control of the Customer.
- 17.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other



contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, if the Customer becomes subject to any of the events listed in clause 17.2 or 17.3 above, or if the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **18. Consequences of termination**

### **18.1 On termination of the Contract:**

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of any sums due under the Contract or these Conditions but for which no invoice has been submitted, and in respect of any Goods and/or Services supplied but for which no invoices has been submitted, the Supplier may submit an invoice or invoices, which shall be payable by the Customer immediately on receipt;
- (b) (i) the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for; (ii) if the Customer fails to do so, then the Supplier may enter the Customer's Premises and take possession of them; (iii) until they have all been returned, the Customer shall be solely responsible for their safe keeping, and will not use them for any purpose not connected with this Contract.

18.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities, of either of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect notwithstanding termination or expiry of the Contract, including clauses 1, 2, 3.4, 3.5, 4.4 to 4.11, 5, 6, 7.6, 7.7, 7.9, 9, 10.1(i), 10.2, 10.3, 11, 12, 13, 16, 17, 18, 19, and 20.

## **19. Confidentiality**

19.1 The Customer shall not at any time without the written consent of the Supplier use or disclose to any person any of the Supplier's Confidential Information that is disclosed to the Customer by, or acquired by the Customer from, the Supplier or any of its Representatives, other than as provided by this clause 19 below.

19.2 The Customer may, in relation to any of the Supplier's Confidential Information voluntarily disclosed to it by the Supplier under, in relation to, or for the purposes of, the Contract: (a) disclose the information to such of its employees, directors, officers, and/or professional advisers, who need to know that information, to the extent that they need to know it, for the purposes of exercising the Customer's rights or carrying out its obligations under or in connection with the Contract (provided in all cases that

the Customer shall ensure and procure, before making any such disclosure, that the intended recipients in question are subject to obligations of confidentiality in respect thereof that are no less onerous than those set out in these Conditions); (b) disclose the information to a court of competent jurisdiction and/or to a governmental or regulatory authority, provided and to the extent that the disclosure is required by law, and in each case only if and to the extent that the Customer gives reasonable advance notice to the Supplier in writing of the proposed disclosure (if and to the extent that it is permitted to do so by law); and (c) use the information in question solely and exclusively to exercise its rights and perform its obligations under or in connection with this agreement, and/or for the duration and purpose for which that information was disclosed to the Customer by the Supplier (and to that extent only), and at no other time and for no other reason or purpose whatsoever.

19.3 This clause 19 shall survive termination of the Contract.

## 20. General

### 20.1 **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 20.1**

**Entire agreement.** (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings made between the parties or by the Supplier, whether written or oral, relating to its subject matter. (b) The Customer acknowledges and agrees that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the Contract or in these Conditions. (c) The Customer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract or in these Conditions. (d) Nothing in this clause shall operate so as to limit or exclude any liability for fraud.

20.2 **Force majeure.** The Supplier shall not be in breach of the Contract or these Conditions, nor liable to the Customer in any other way, for or in relation to any delay in performing, or failure to perform, any of its (the Supplier's) obligations under the Contract or these Conditions, if such delay or failure is caused by the Customer's own acts or omissions and/or results from any events, circumstances or causes beyond the Supplier's reasonable control (including for the avoidance of doubt any power, computer, or communications failure or outage, or any industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, or any other event beyond the reasonable control of the Supplier) (a **Force Majeure Event**).

20.3 **Assignment and other dealings.** (a) The Supplier may at any time, and from time to time, assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and/or obligations under the Contract or these Conditions, or sub-contract any of its obligations detailed within the Contract or these Conditions. (b) The Customer shall not assign, transfer, mortgage, charge,

subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and/or obligations under the Contract or these Conditions without the prior written consent of the Supplier.

- 20.4 **Variation.** Except as set out in the Contract or these Conditions, or otherwise agreed between the parties in writing, no variation of the Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.
- 20.5 **Waiver.** (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. (c) No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.6 **Severance.** (a) If any provision or part-provision of these Conditions or of the Contract is or becomes void, invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. (b) If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. (c) Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions or of the Contract. (d) If any provision or part-provision of these Conditions or the Contract is or becomes void, invalid, illegal or unenforceable, and is modified or deleted pursuant to the foregoing parts of this clause, then the Supplier and Customer shall negotiate with one another in good faith to amend these Conditions and the Contract to the minimum degree necessary such that the same, as amended, is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original Conditions and Contract prior to the said modification or deletion of the provision or part-provision in question, and such that the amendment, if and insofar as is possible, has effect between the parties as from the date of the said modification or deletion.
- 20.7 **No partnership or agency.** (a) Nothing in these Conditions or in the Contract is intended to nor shall be deemed to establish or constitute any partnership or joint venture between either of the parties, nor establish or constitute either party as the agent or employee of the other, nor authorise either party to make or enter into any representations or commitments for or on behalf of the other. (b) Each party hereby warrants and confirms to the other that in entering into and performing its obligations under these Conditions and the Contract it is and will be acting on its own behalf and not for or on behalf of or for the benefit of any other person. (c) Neither the Supplier nor the Customer shall represent to any third party that either of them (the Supplier or the Customer) has the authority to represent or bind the other whether as agent or otherwise.

- 20.8 **Joint and several liability.** Where the Customer consists of two or more persons, references to the Customer throughout the Contract and these Conditions shall mean each or any of them, and all obligations on the part of the Customer shall be joint and several obligations of all and each of those persons.
- 20.9 **Rights and remedies.** (a) Unless and to the extent that may otherwise be expressly provided in these Conditions or in the Contract, the rights and remedies provided in the same are cumulative, and are in addition to, and not exclusive of, any other rights or remedies, whether as provided by law or in equity or otherwise. (b) For the avoidance of doubt, obligations contained in these Conditions or in the Contract are entirely additional and supplemental to any and all other obligations that may be owed by either party to the other (whether in law or in equity, and whether of a contractual or non-contractual nature, or otherwise, and whether in relation to any confidential information or otherwise), and the commencement, termination, and/or expiry, of the Contract shall have no effect whatsoever upon the existence or continuation of any such obligations.
- 20.10 **Third party rights.** Unless expressly stated otherwise in the Contract or these Conditions, neither the Contract nor these Conditions gives rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract or these Conditions.
- 20.11 **Costs and expenses.** Save and to the extent that may otherwise be expressly provided in these Conditions or the Contract, or agreed in writing between the parties, each party shall bear its own costs and expenses incurred in connection with the negotiation, drafting, and execution, of the Contract.
- 20.12 **Language.** These Conditions and the Contract shall be drafted in English, and if any translation is made, the English language version shall prevail.
- 20.13 **Governing law.** These Conditions, and the Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the subject matter or formation of any of them, shall be governed by, and construed in accordance with the law of England.
- 20.14 **Jurisdiction.** (a) Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions, or the Contract, or its/their subject matter or formation. (b) Notwithstanding the foregoing, nothing in this agreement shall prevent either party from bringing or pursuing anywhere in the world, in any jurisdiction whatsoever, any enforcement proceedings (whether by way of claim, action, or otherwise howsoever) to enforce any order or judgment obtained in, from or before the English courts.

## **22. Termination Notice Period**

22.1 Either party may terminate this Agreement by providing at least 12 months' written notice before the end of the current contract term.

22.2 If no notice is given, the contract will automatically renew for a further 12 months under the same terms.

22.3 Termination requests must be made in writing and acknowledged by the Supplier before taking effect.

22.4 Early termination by the Customer may incur charges equal to the remaining contract period unless otherwise agreed in writing.

22.5 The Supplier reserves the right to terminate with immediate effect if the Customer breaches this Agreement or fails to meet payment obligations.

## **23. Supremacy of Terms & Updates**

23.1 These Terms and Conditions supersede any conflicting terms in any other contract, agreement, or user form.

23.2 By signing a new contract or new user form, the Customer acknowledges and agrees that these Terms remain in effect and take precedence.

23.3 The Customer further agrees to adhere to any updates to these Terms and Conditions as published by the Supplier, provided that such updates are communicated in writing prior to renewal or signing a new contract.