

1. **Application of Terms and Conditions**

- 1.1 The Supplier shall supply and the Customer shall purchase the Goods and Services in accordance with the quotation, order confirmation or email specification which shall be subject to these Terms and Conditions; and
- 1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2. **Definitions and Interpretation**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means any day other than a Saturday, Sunday or bank holiday;
“Commencement Date”	means the commencement date for the Contract as set out in the quotation, order confirmation or sales invoice;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Contract”	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
“Contract Price”	means the price stated in the Contract payable for the Goods and/or Services;
“Customer”	means the person who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
“Delivery Date”	means the date on which the Goods are to be delivered as stipulated in the Customer’s order and accepted by the Supplier;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Terms and Conditions;
“Month”	means a calendar month;

- “Service Level Agreement”** means any Service Level Agreement made between the Supplier and the Customer detailing the terms on which the Supplier is to provide the Services to the Customer
- “Services”** means the services to be provided to the Customer as set out in the quotation, order confirmation or sales invoice; and
- “Supplier”** means Marley Communications Ltd, a company registered in England under company registration number 3827758 of Unit 8 Caddsdwn Business Centre PL6 7FB and includes all employees and agents of Marley Communications Ltd.

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- (a) “writing” and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - (b) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - (c) “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
 - (d) a Schedule is a schedule to these Terms and Conditions; and
 - (e) a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
 - (f) a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

3. **Basis of Sale and Service**

- 3.1 The Supplier’s employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier or are deemed to be agreed by virtue of the Parties’ conduct following any variation to them that has been communicated in writing to the other Party.
- 3.3 Sales literature, price lists and other documents issued by the Supplier in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods and Services shall be binding on the Supplier unless the Supplier has issued a quotation which is expressed to be an offer to sell the Goods and Services or has accepted an order placed by the Customer by whichever is the earlier of:
- (a) the Supplier’s written acceptance;

- (b) delivery of the Goods;
- (c) provision of the Services; or
- (d) the Supplier's invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4. The Goods

- 4.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative.
- 4.2 The specification for the Goods shall be that set out in the Supplier's sales documentation unless varied expressly in the Customer's order (if such variation(s) is/are accepted by the Supplier). The Goods will only be supplied in the minimum units thereof stated in the Supplier's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.
- 4.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required 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.
- 4.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

5. The Services

- 5.1 With effect from the Commencement Date the Supplier shall, in consideration of the price being paid in accordance with Clauses 6 and 7 will provide the Services expressly identified in the sales invoice.
- 5.2 The Supplier will use reasonable care and skill to perform the Services identified in the sales invoice.
- 5.3 The Supplier shall use its reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of such obligations.

6. Price

- 6.1 The price of the Goods and Services shall be the price listed in the Supplier's sales invoice current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by the Supplier and the Customer.

- 6.2 Where the Supplier has quoted a price for the Goods other than in accordance with the Supplier's published price list the price quoted shall be valid for 7 days only or such lesser time as the Supplier may specify.
- 6.3 The Supplier has the right, once per calendar year and without the need to consult or notify the Customer, to increase its price for any Services provided under a Service Level Agreement by 2% of the price immediately preceding the increase.
- 6.4 In addition to its right contained at sub-Clause 6.3, the Supplier reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 6.5 Except as otherwise stated under the terms of any quotation, order confirmation, sales invoice or in any price list of the Supplier, and unless otherwise agreed in writing between the Customer and the Supplier, all prices are inclusive of the Supplier's charges for packaging and transport.
- 6.6 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to the Supplier.
- 6.7 The Supplier reserves the right, by giving written notice to the Customer at any time, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture)

7. **Payment**

- 7.1 Subject to any special terms agreed in writing between the Customer and the Supplier (for example but not limited to a Service Level Agreement), the Supplier shall invoice the Customer for the price of the Goods and Services on or at any time after delivery of the Goods and/or the Provision of the Services (as applicable), unless, in the case of Goods, the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.
- 7.2 The Customer shall pay the price of the Goods (less any discount or credit allowed by the Supplier, but without any other deduction, credit or set off) within 30 Business Days of the date of the Supplier's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and the Supplier in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods

has not passed to the Customer. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 7.3 All payments shall be made to the Supplier as indicated on the form of acceptance or invoice issued by the Supplier.
- 7.4 The Supplier is not obliged to accept orders from any Customer or buyer who has not supplied the Supplier with references satisfactory to the Supplier. 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 no further Goods or Services will be delivered or provided to the Customer other than against cash payment and, notwithstanding sub-Clause 7.2 of these conditions, all amounts owing by the Customer to the Supplier shall be immediately payable in cash.

8. Delivery and Performance

- 8.1 Delivery of the Goods shall be made by the Supplier delivering the Goods to the place in the United Kingdom specified in the quotation, order confirmation or sales invoice or, if no place of delivery is so specified, by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection.
- 8.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 8.3 If the Customer fails to take 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 sub-Clause 10.1 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.
- 8.4 With effect from the Commencement Date the Supplier shall, in consideration of the price being paid in accordance with these Terms and Conditions and the quotation, order confirmation or sales invoice provide the Services expressly identified in the quotation, order confirmation or sales invoice.

9. Non-Delivery of Goods and Services

- 9.1 If the Supplier fails to deliver the Goods or provide the Services or any of them on the Delivery Date (or within the time-frame specified within the Service Level Agreement, as appropriate) other than for reasons outside the Supplier's reasonable control or the Customer's or its carrier's fault:
 - (a) if the Supplier delivers the Goods and/or provides the Services at any time thereafter the Supplier shall have no liability in respect of such late delivery; or
 - (b) if the Customer gives written notice to the Supplier within 7 Business Days after the Delivery Date (or, for Services, within 7 Business Days of a failure to carry out

Services as agreed within the Service Level Agreement, as appropriate) and the Supplier fails to deliver the Goods and/or Services within 14 Business Days after receiving such notice the Customer may cancel the order and the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods or Services to those not delivered or provided over the price of the Goods or Services not delivered or provided.

10. Risk and Retention of Title

- 10.1 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.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and 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.
- 10.3 Sub-Clause 10.2 notwithstanding, 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.
- 10.4 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 be in possession of the Goods as bailee for the Supplier and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Supplier and shall insure the Goods against all reasonable risks.
- 10.5 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.
- 10.6 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 sub-Clause 10.4.
- 10.7 The Customer's right 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 his obligations under these Terms and Conditions;

- (b) the Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- (c) the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- (d) the Customer 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 Customer, notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

11. Assignment

- 11.1 The Supplier may assign the Contract or any part of it to any person, firm or company without the prior consent of the Customer.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

12. Defective Goods

- 12.1 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 three Business Days of such delivery, the Supplier shall at its option:
 - (a) replace the defective Goods within 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.
- 12.2 No Goods may be returned to the Supplier without the prior agreement in writing of the Supplier. 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.
- 12.3 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 other act or omission on the part of the Customer, its employees or agents or any third party.

- 12.4 Goods, other than defective Goods returned under sub-Clauses 12.1 or 12.2, 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.
- 12.5 Subject as expressly provided in these Terms and 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.
- 12.6 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, 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 Sub-Clause.

13. Customer's Default

- 13.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
 - (a) cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
 - (b) appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
 - (c) charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 13.2 In the event that:
 - (a) the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
 - (b) the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
 - (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
 - (d) the Customer ceases, or threatens to cease, to carry on business; or
 - (e) the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,then, without prejudice to any other right or remedy available to the Supplier, the

Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. **Liability**

- 14.1 The Supplier will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 The Customer shall indemnify the Supplier against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.
- 14.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 14.5 The Supplier shall not be liable to the Customer or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.
- 14.6 Where Customer equipment has been brought in for repair, the Supplier will not accept any liability for cosmetic or surface damage to the equipment or parts.
- 14.7 Where the Customer accepts Goods in an untested state, the Supplier does not warrant that Goods are fully-functional at the time of delivery and therefore accepts no liability to repair the Goods should they later be proven to be faulty.
- 14.8 Nothing in these Terms and Conditions excludes or limits the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence;
 - (b) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
 - (c) for fraud or fraudulent misrepresentation.
- 14.9 Subject to the other provisions of this Clause 14:
- (a) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
 - (b) the Supplier shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation

whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15. Confidentiality

15.1 Each Party undertakes that, except as provided by sub-Clause 15.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Contract and for one year after its termination:

- (a) keep confidential all Confidential Information;
- (b) not disclose any Confidential Information to any other person;
- (c) not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions and the Contract;
- (d) not make any copies of, record in any way or part with possession of any Confidential Information; and
- (e) ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 15.1(a) to 15.1(d) above.

15.2 Either Party may:

15.2.1 disclose any Confidential Information to:

- (a) any sub-contractor or supplier of that Party;
- (b) any governmental or other authority or regulatory body;
or
- (c) any employee or officer of that Party or of any of the
aforementioned persons, parties or bodies,

to such extent only as is necessary for the purposes contemplated by these Terms and Conditions and the Contract, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 15.2.1(b) above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 15, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

15.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

15.3 The provisions of this Clause 15 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.

16. **Communications**

- 16.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 16.2 Notices shall be deemed to have been duly given:
- (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
 - (b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - (c) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - (d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 16.3 All notices under these Terms and Conditions and under the Contract shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party from time to time.

17. **Customer Data**

- 17.1 The Customer agrees to take regular backups of all data on the computer systems and keep this in a safe place.
- 17.2 It is solely the Customer's responsibility to ensure backups are working correctly each day and to notify the Supplier in the event of any fault.
- 17.3 The Supplier cannot be held responsible for any data on the Customer's computer network.
- 17.4 The Supplier undertakes the Services on the understanding that the Customer has taken all reasonable steps to ensure their data is backed up beforehand.
- 17.5 If a Customer has a Service Level Agreement with the Supplier, it still remains the Customer's sole responsibility to protect their own data against loss and the Supplier cannot be held responsible for any loss the Customer may suffer in this regard.

18. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

19. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing

waiver.

20. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these Terms and Conditions and the Contract shall be valid and enforceable.

21. Third Party Rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. Law and Jurisdiction

22.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

22.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales

23. Porting

Please note that all requests to port out numbers will charge at £12 per number

Terms and Conditions for Re Occurring Services

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.2.

Data Protection Legislation: Data Protection Act 2018 (DPA 2018).

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and [neighbouring and] related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Licences: the licences subscribed for by the Customer as contained within the Services, as set out in the Order.

Order: the Customer's order for Services as set out overleaf.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Services Commencement Date: the date of signing this agreement.

Specification: the description or specification of the Services provided in writing or online at <https://www.marleycomms.co.uk> by the Supplier to the Customer.

Subscription Fees: The fees payable by you for the Services as confirmed by us to you before the date of this agreement, whether in person, in writing to you, in the Order, or published on our website or through third party websites immediately prior to your acceptance of these terms.

Supplier: Marley Communications Ltd registered in England and Wales with company number 08212573.

Supplier Materials: has the meaning set out in clause 4.1(h).

1.2 Interpretation:

(a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time and

(ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

(b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to writing or written includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date) and you shall agree to these terms and our privacy policy found at <https://www.marleycomms.co.uk/legal>.

2.3 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.

2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.5 Marley Communications LTD are providing the Services under this agreement.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in in the Specification but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 If, as specified in the Order, the Customer elects to purchase 36 months of the Services, the term of the Services shall be, unless otherwise provided for in clause 8 for the period of 36

consecutive calendar months, commencing upon completion of this Agreement (Annual Subscription Term) and thereafter shall be automatically renewed for successive periods equivalent to that of the Annual Subscription Term (each a Renewal Period), unless:

(a) Either party notifies the other party of termination, in writing or by email at least 90 days before the end of the Annual Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Annual Subscription Term or Renewal Period; or

(b) Otherwise terminated in accordance with the provisions of this Agreement.

(c) Either party notifies the other party of termination, in writing or by email at least 24 hours before the end of the Monthly Subscription Term or any Monthly Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Monthly Subscription Term; or

(b) Otherwise terminated in accordance with the provisions of this Agreement.

3.8 Subject to clause 3.8, the Customer retains the right to alter the number of Licences subscribed for any renewal Period

3.9 For the avoidance of doubt and for the purposes of clause 3.7, there shall be no limit, restriction or otherwise on the number of Services subscribed for in the Order by the Customer.

3.10 The Customer shall have 72 hours after the commencement of the Completion of this Agreement in order to make any amendments to the Order. There shall be no limit, restriction or otherwise on the alterations made by the Customer under this clause 3.9.

3.11 If the Customer requires additional, or wishes to upgrade, the Licences these can be added on request, by giving written confirmation, electronically or otherwise, of the changes to the Supplier, and on payment of the appropriate additional Subscription Fee, payable for the remainder of the Annual Subscription Term, Monthly Subscription Term, or any Renewal Period or Monthly Renewal Period respectfully. Please note any additional licencing will either be for a minimum period of 12 months or for the remainder of the contract, which ever is greater.

3.12 The Customer shall not be able to downgrade, or reduce the amount of, Licences subscribed for during this agreement, including any increase under clause 3.10. For the avoidance of doubt, where you require an increase in the number of Licences (under clause 3.10), this shall apply for the remainder of the Annual Subscription Term, or any Renewal Period, or for the Monthly

Subscription Term, or any Monthly Renewal Period and shall not be capable of being reduced, whether to the initial number of Licences subscribed for or not.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (f) 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.

4.2 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):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it 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 4.2; 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.

5. Subscription Fees

5.1 The method of payment will be standard monthly direct debit and you are responsible for ensuring that the direct debit can be paid in full on the due date. You are required to provide valid, up-to-date and complete bank account details and hereby authorise us to bill such account. Your monthly costs shall be set out in the Order, and shall roll continuously unless notified by the Supplier. You will receive an invoice from us over the term subscribed for and these will be generated when each monthly payment is taken. These payments shall be deducted from you on a monthly basis via direct debit. Your first payment will be due on the first day of the month proceeding the completion of the agreement.

5.2 The Subscription Fees for any Renewal Period or monthly renewal period shall continue to be taken on a monthly basis by direct debit, as instructed on the Services Commencement Date.

5.3 If we have not received payment within 30 days after the due date, and without prejudice to any other rights and remedies we may have:

(a) We may, without liability to you, disable all or part of the Services and shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

(c) We shall be entitled to recover costs, including a reasonable amount in respect of management time, for the time incurred chasing the late payment under this clause 5.3. This shall be calculated on a time spent basis and constitutes the damages suffered by us in the event of your failure to make payment.

5.4 We shall be entitled to increase the Subscription Fees in the event of an increased number of Licences subscribed for over and above the number of Licences subscribed for at the Services Commencement Date. Details of this shall be notified to you, by us.

5.5 Marley Communications Limited reserves the right, once per calendar year, to increase its fees and charges without the need to notify or obtain agreement from the client.

6. Intellectual property rights

6.1 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.

7. Data Protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the data controller and the Customer is the data processor (where Data Controller, Personal Data and Data Processor have the meanings as defined in the Data Protection Legislation).

7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

7.4 Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) share that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of the United Kingdom applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of the United Kingdom as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer's cost, in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for audits by the Customer or the Customer's designated auditor.

7.5 The Supplier does not consent to the Customer appointing any third party processor of Personal Data under this agreement, and in which case the Customer confirms they shall reflect and will continue to reflect the requirements of the Data Protection Legislation.

7.6 Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 This clause 7 sets out the entire financial liability of the Supplier to you:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by the Customer of the Services; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

8.2 Except as expressly stated in clause 7.5:

(a) The Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damages even if the Supplier was aware of the circumstances in which such special damages could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill; or
- (vi) loss or corruption of data.

8.3 The Supplier's total liability, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Subscription Fee.

8.4 The Customer agrees that, in entering into this Agreement, they did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if the Customer did rely on any representations, whether written or oral, not expressly set out in this Agreement) that they shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

8.5 The exclusions in clause 7.2 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- (a) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (b) any other liability which may not be excluded by law.

8.6 All dates supplied by us in respect of the Services shall be treated as approximate only. We shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

9. Termination

9.1 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 a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 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.

9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;

- (b) the Customer becomes subject to any of the events listed in clause 8.1(c) or clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and

- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.1(b).

9.4 Without affecting any other right or remedy available to it, the Customer shall be able to terminate the Contract at any time, and for any reason, but in doing so shall be liable to pay any and all sums that would have fallen due under the entire term of which they have subscribed for in their Order, as well as an early termination fee, disclosure of such fee shall be immediately made by the Supplier, at the request of the Customer.

10. Consequences of termination

10.1 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 Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. General

11.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(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 obligations under the Contract without the prior written consent of the Supplier.

11.3 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 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 between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges 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 set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

11.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver. 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. 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. 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.

11.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 10.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.8 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Specification.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by fax or email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause 10.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

12.0 Hardware is the sole property of Marley Communications Ltd until all monies are paid in full, at the end of any given contract all hardware not specifically owned by the client must be returned to the address given and at your own cost.