

MASTER SERVICES AGREEMENT

This Agreement is entered into on [xxxxxxxx] (“Effective Date”) by and between Wifinity Limited, a company organised and existing under the laws of England, registered company number 03921568, whose registered office is at 5th Floor, The Grange, 100 High Street, Southgate, London, N14 6BN, United Kingdom (“Wifinity”) and **Coventry University Higher Education Corporation**, a company organised and existing under the laws of England, , registered company number [xxxxx], whose registered office is at [xxxxxxxx] with its principal offices at [xxxxxxxx] (“Customer”).

WHEREAS, Wifinity provides Internet and related services to multi-occupancy premises in the United Kingdom; and

WHEREAS, Customer wishes to purchase certain Services offered by Wifinity pursuant to the terms and conditions contained herein.

NOW THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 For purposes of this Agreement, capitalized words shall have the meaning assigned to them under this Section or as elsewhere defined in the Agreement:

- (a) “**Access Codes**” means the numbers allocated to the Customer by Wifinity which shall include, but is not limited to, mailbox numbers, Networks User Identity, IP addresses, or circuit reference numbers.
- (b) “**Acceptable Use Policy**” shall mean Wifinity’s policy on usage of the Services as set out in [Wifinity’s Terms and Conditions](#) which can be found at [Terms and Conditions - Wifinity](#), as amended from time to time, which Acceptable Use Policy is incorporated herein by this reference.

- (c) **“Acceptance”** means that Service has been accepted by the Customer or an individual Second Tier End User (as applicable) as being of satisfactory quality, in accordance with the terms of Clause 2.2 below.
- (d) **“Agreement”** means this Master Services Agreement generally and with respect to any Service provided hereunder, shall include the Service Specific Terms and the Order Form relating to each Service.
- (e) **“Affiliate”** means, in relation to a Party, any other entity, which directly or indirectly controls, is controlled by, or is under common control with such Party.
- (f) **“Applicable Law”** means any laws, statutes or ordinances and any regulations, rules, practice notes, circulars and any other notification issued by any government entity, taxing authority, or regulatory authority pursuant to such laws, statutes and ordinances that apply to the Services or Parties in any jurisdiction.
- (g) **“Billing Date”** means the date on which billing for the Service(s) shall commence.
- (h) **“Cancellation Charge”** means the liquidated damages that may be payable by the Customer as described in clause 13.4.
- (i) **“Charges”** means the charges payable for each Service, as set forth in the relevant Order Form, including, without limitation, any one time fees, recurring, usage, rental, or other fees, or other charges payable by Customer in relation to a Service pursuant to the terms of this Agreement.
- (j) **“Consequential Loss”** means any loss of profit, loss of goodwill, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings, loss or corruption of data or loss of privacy of communications; and any consequential, special, indirect, exemplary or punitive damages, of any nature.
- (k) **“Customer Equipment”** means all hardware, software and consumables dedicated for the provision of the Services but owned, licensed or controlled by the Customer, a Customer Affiliate or a third party agent of the Customer.

- (l) **“Customer Requested Target Completion Date”** means the date on which the Customer requests that the Service be provided and which date is specified in the applicable Order Form.
- (m) **“Effective Date”** means the date set forth above, or, if no date is set forth, then the date of the first Customer Order Form hereunder.
- (n) **“End User”** means either a First Tier End User or a Second Tier End User as applicable.
- (o) **“End User Specific Services”** means services made available for dedicated use by an individual Second Tier End User (typically in a private dwelling), which will be subject to such End User’s acceptance of the End User Terms, which may or may not include an obligation on the Second Tier End User to make payment for such services, depending upon the terms of the Order Form agreed between Wifinity and the Customer.
- (p) **“End User Terms”** means the terms and conditions applicable to a Second Tier End User’s use of a Service, as accessed through the Wifinity Website, including payment terms except to the extent that a Service has been designated as a free Service for Second Tier End Users in a particular Order Form.
- (q) **“First Tier End User”** means an employee or other worker of the Customer, and/or any other individual in respect of whom the Customer accepts responsibility for such person’s use of one or more Services purchased by the Customer under the terms of this Agreement, and facilitates direct access to such Service(s) by such individual, either through not requiring them to enter any password to access such Service(s) or by providing them with the appropriate means to obtain password protected access.
- (r) **“Force Majeure Event”** means an event outside the reasonable control of a Party, including without limitation industrial disputes of any kind; war declared or undeclared; blockade; disturbance; a natural disaster such as lightning, earthquake, storm, flood, explosion or meteor; fire; epidemics/pandemics; law or any power lawfully exercised by a government agency; any change in any Applicable Law; inability or delay in granting governmental or other approvals, consents, permits,

licenses or authorisations; a telecommunication network outage or degradation or failure by a circuit provider to provide a circuit.

- (s) **“Intellectual Property Rights”** means all intellectual property rights subsisting throughout the world conferred under statute, common law and equity, including, without limitation, patents, copyrights, trademarks.
- (t) **“Interest Rate”** means 1.5% (per month or if such amount is not permitted by governing law, the highest rate permitted by law will be applied).
- (u) **“Loss”** includes any loss, costs, damages, expense, liability and charge incurred by a Party, including Consequential Loss.
- (v) **“Managing Agent”** means the company appointed by the Customer to run and manage the building and services.
- (w) **“Minimum Contract Period”** means the fixed period during which Customer agrees to pay for the Services, commencing on the Service Commencement Date, and as used herein, refers to both the initial term of an Order Form or any renewal term of the same Order Form.
- (x) **“Networks”** means the telecommunications network owned or operated by Wifinity or its Third Party Supplier and used in connection with providing the Services and all facilities and associated equipment used in, or in connection with, that network, but excluding the Customer Equipment.
- (y) **“Networks User Identity”** means an identification number, password and/or pass code assigned by Wifinity to the Customer that allows the Customer to use a Service.
- (z) **“Order Form”** means a written or electronic application (in a form approved by Wifinity) made by the Customer requesting provision of one or more Services or modifications to one or more Services.
- (aa) **“Parties”** means Wifinity and Customer collectively.

- (bb) **“Party”** means Wifinity or Customer.
- (cc) **“Personal Data”** shall have the meaning set out in the Data Protection Act 2018 as the same may be amended or replaced from time to time.
- (dd) **“Premises”** means the location or locations occupied by Customer and/or End Users, to which a Service is delivered, as indicated in an Order Form.
- (ee) **“Renewal Period”** means the period following the expiry of the Minimum Contract Period.
- (ff) **“Second Tier End User”** means a User of a Service who obtains access to such Service as a result of going to the Wifinity website and accepting the End User Terms for that Service.
- (gg) **“Service”** means a service supplied by Wifinity to the Customer under this Agreement pursuant to an Order Form, and which service is more fully described in the Service Specific Terms, but expressly excluding End User Specific Services.
- (hh) **“Service Commencement Date”** means the date on which Wifinity delivers the Service to Customer pursuant to clause 2.2.
- (ii) **“Service Commencement Notice”** or **“SCN”** means a notice sent via e-mail or letter by Wifinity to Customer stating that the applicable Service is operational.
- (jj) **“Service Demarcation Point”** means the point where Wifinity’s Service, as described in the Order Form, ends.
- (kk) **“Service Equipment”** means the equipment (including any software contained in that equipment) installed at Premises and owned or controlled by Wifinity or a Third Party Supplier, which is not Customer Equipment and which is used in connection with the provision of Services other than a Second Tier End User specific Service.
- (ll) **“Service Levels”** means, where applicable to a Service, the committed levels of

service in accordance with which Wifinity will use its reasonable endeavours to provide that Service, as specified in the Service Specific Terms and, unless otherwise set forth in the applicable Service Level, excludes services procured from Third Party Suppliers.

(mm) “**Service Specific Terms**” means the document that sets forth the specific terms applicable to a particular Service.

(nn) “**Third Party Supplier**” means a service provider, including an Affiliate, from whom Wifinity procures services or service components in order to provide the Services to the Customer.

1.2 The Service Specific Terms and Order Form(s) form a part of this Agreement and any reference to the Agreement includes the Service Specific Terms and Order Form. In the event of a conflict among this Master Services Agreement, the Service Specific Terms, and the Order Form, the conflict will be resolved in the following order of precedence: the Order Form, the Service Specific Terms relevant to that Service and this Master Services Agreement.

1.3 The Agreement shall be deemed drafted equally by both Parties. Its language shall be construed as a whole and according to its fair meaning. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to articles, clauses or paragraphs are to those parts of this Agreement, unless the context clearly indicates to the contrary. Words importing the singular shall include the plural and vice versa and words importing a gender include every gender.

2. SERVICES AND SCOPE OF THE AGREEMENT

2.1 Wifinity shall provide the Services with the care and skill of a competent telecommunications provider, in accordance with the terms of the Agreement and any and all Applicable Laws up to the Service Demarcation Point.

2.2 End User Specific Services will be subject to acceptance by the individual Second Tier End User in accordance with the relevant End User Terms. All new Services for use by the Customer and/or its First Tier End Users, or made available generally to all End Users free of charge, shall be subject to acceptance by Customer within three (3) days of the date of

Wifinity's SCN ("Acceptance Period"). Prior to the end of the Acceptance Period, Customer shall provide Wifinity with a written notice of any deficiencies in the Service, as measured against the applicable Service Levels set out in the Service Specific Terms. If Customer provides written notice of deficiencies pursuant to this clause 2.2, Wifinity shall remedy such deficiencies and re-submit to the Customer a notice for service commencement, at which point the Customer shall once again have three (3) days to test and provide Wifinity with a written notice of any deficiencies, pursuant to this paragraph or the Service shall be deemed accepted. In the absence of such written notice, the Service shall be deemed accepted and the Service Commencement Date shall be as stated in the SCN. There shall not be an Acceptance Period for renewal Services, and in the absence of an SCN for renewal Services, the Service Commencement Date for renewal Services shall be the date Wifinity commences billing under the applicable renewal Order Form. Wifinity shall be entitled to commence billing for Services as of the corresponding Service Commencement Date; provided however that if an SCN applicable to the Service provides a Billing Date later than the Service Commencement Date, billing shall begin on the Billing Date. No failure of Customer to provide information, other facilities, or third party services necessary to permit Customer to utilize the Services shall operate as a defence against non-payment.

3. TERM

- 3.1** This Master Services Agreement shall come into force on the Effective Date and may not be terminated where there are any live Order Forms sitting under it. Except as permitted by clause 13 below, the termination of this Agreement shall not operate to terminate any existing, accepted Order Form and the terms of this Agreement shall continue to apply to each Order Form until the Order Form terminates or expires.
- 3.2** An Order Form shall become effective and binding on the Parties on the date it is signed by both Parties. Unless otherwise specified in the relevant Service Specific Terms or Order Form, the Minimum Contract Period for each Service shall remain in effect for twelve (12) months after the applicable Service Commencement Date and except where terminated by written notice from one Party to the other served at least two calendar months prior to the end of the Minimum Contract Period or then current Renewal Period, the Order Form will auto-renew for a further Renewal Period of 12 months. In the event a Party terminates a Service without cause, Wifinity will continue to provide and Customer

shall be obligated to pay for such Services through the end of the calendar month in which the notice period expires. For the avoidance of doubt, the Customer will not be liable to pay for Services chargeable to an individual Second Tier End User where these are terminated prior to the end of any agreed Minimum Contract Period or then current Renewal Period.

4. CUSTOMER'S OBLIGATIONS

The Customer shall, at its own expense, provide the proper facilities and resources for installation, maintenance, and operation of the Services, including, without limitation, any Customer Equipment necessary to permit Customer or to make use of the Services, any services, including, without limitation, local loops or cross-connects not included in the Service being provided by Wifinity (as set forth in the Service Specific Terms or Order Form), obtaining and maintaining any required licences or permits, and ensuring that the Services are used, whether by Customer or its First Tier End Users, in accordance with the terms of this Agreement and any Applicable Law. In addition, the Customer shall, at its own expense, be responsible to connect to Wifinity at the Service Demarcation Point.

5. ACCESS CODES

In the event Wifinity assigns Customer Access Codes pursuant to an Order Form, the following terms and conditions apply:

- 5.1 The Customer acknowledges that Wifinity may withdraw or change an Access Code on reasonable grounds and upon reasonable notice being provided to the Customer;
- 5.2 Access Codes assigned to the Customer shall be personal to the Customer and the Customer shall be responsible for using them in accordance with the rules and instructions given to it by Wifinity from time to time;
- 5.3 The Customer shall immediately notify Wifinity of any unauthorized use of any Access Code and Wifinity shall immediately discontinue access to the affected Services and allocate a new Access Code;
- 5.4 The Customer shall be responsible for all Charges incurred through the use of the Services (whether authorized or otherwise) when access to the Services is obtained through the

use of any of the Access Codes assigned by Wifinity to the Customer; and

5.5 The Customer shall be responsible for keeping any Networks User Identity confidential.

5.6 For the avoidance of doubt, the ownership of the Access Codes will remain at all times with Wifinity.

6. CHARGES AND TAXES

6.1 Calculation of Charges and Invoicing

- (a) Fixed or recurring Charges are billed quarterly in advance and any variable (usage-based) Charges shall be billed monthly in arrears. One-time Charges and installation Charges will be invoiced on acceptance of the relevant Order Form.
- (b) Customer is responsible for all Charges incurred through the use of the Services provided hereunder. Subject to the dispute procedures set forth herein, Wifinity's usage records will be prima facie evidence of the usage of a Service and the Charges payable by the Customer.
- (c) If the calculation for any amount or Charges under this Agreement commences on a date other than the first day of a month or terminates on a date other than the last day of a month, the relevant amount or Charges due for the partial month shall be calculated pro-rata, on the basis of the actual number of days in the relevant month.
- (d) Where Wifinity incurs costs associated with Customer-initiated delays after acceptance of the Order Form, Customer shall be liable for any such costs. Where a delay in occupancy or uptake by End Users occurs due to no fault of Wifinity, Wifinity shall be entitled to charge the full amount of the recurring charges as detailed in the Order Form from the service go-live date.
- (e) Where Wifinity incurs costs associated with any act or omission of the Customer or the Customer's agents, employees, subcontractors, suppliers or other third parties not under the control of Wifinity, Customer shall be liable for any such costs. This includes, but is not limited to, when a Customer pauses progress on a development,

building or site.

- (f) Where Customer requests Wifinity to dispatch personnel to Customer's Premises in connection with a Service failure, Customer shall be liable for the costs of such service call where the failure is found to be in the Customer Equipment, or any other equipment, software, services, or facility not provided by Wifinity.
- (g) While Customer may use the Order Form to nominate an Affiliate company or a Managing Agent to be the recipient and payer of any invoices, this does not revoke or remove any obligation or liability of the Customer for its responsibility to pay in accordance with this Clause 6. Wifinity reserves the right to approve the Affiliate or Managing Agent nominated by the Customer.
- (h) Wifinity reserves the right to request a parent company guarantee at its sole discretion.

6.2 Variation of Charges

6.2.1 The Charges set forth in the Order Form are fixed during the Minimum Contract Period, provided that, Wifinity may pass through to Customer, without mark up, any additional fees or costs or surcharges resulting from a change in regulation, tax, or otherwise imposed by any regulatory or governmental body on the Services and that Wifinity shall be entitled to increase the Charges annually by no more than the Retail Price Index (RPI) plus 3.9% for the preceding year. This price increase will occur on either 1 January or 1 July (whichever falls first following the anniversary of service commencement). Additionally, where the Service is being terminated by a Third Party Supplier at the Customer Premises, the Charges set forth in the Order Form for such Service assumes that such Service will be terminated at a pre-established Service Demarcation Point or minimum point of entry (MPOE) in the building within which the Customer Premises is located, as determined by the Third Party Supplier. Notwithstanding the foregoing, Wifinity may pass through to the Customer additional Charges not otherwise set forth in the Order Form for such Service where the Third Party Supplier determines that it is necessary to extend the Service Demarcation Point or MPOE through the provision of additional infrastructure, cabling, electronics or other materials

necessary to reach the Customer Premises.

6.2.2 Notwithstanding clause 6.2.1 above:

- (a) Wifinity reserves the right to amend its Charges at any time prior to installation; and
- (b) Wifinity may, by giving notice to the Customer at any time, increase the price of the Services to reflect any increase in the cost of the Equipment and / or Services that is due to:
 - (i) any factor beyond Wifinity's control (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, compliance with statutory provisions from time to time in force, and increases in labour, materials and other manufacturing costs and increases in prices charged to Wifinity by any manufacturer or third party supplier); or
 - (ii) any delay caused by any instructions of the Customer or failure of the Customer to give Wifinity adequate or accurate information or instructions.

6.3 Payment

- (a) Subject to paragraph (b) below, the Customer must pay invoices for one-time Charges and installation Charges prior to the delivery of Service and each invoice for recurring and variable Charges within thirty (30) days ("Credit Period") of the date of the invoice, unless the Order Form provides a different Credit Period ("Due Date"). Payment shall be made to the bank account details provided in the related invoice without set off, deduction, or counterclaim for any amount (including, without limitation, Taxes) in the manner agreed by the Parties. Notwithstanding the foregoing, in the event Customer pays the Charges in a currency other than the currency indicated on the invoice, Customer shall be responsible for any currency exchange loss suffered by Wifinity so that Wifinity receives an amount equal to the Charges invoiced.
- (b) Customer must present any disputes regarding the correctness of an invoice within thirty (30) days of the date of the relevant invoice or such dispute shall be deemed

waived. Customer shall provide Wifinity with documentation that demonstrates the improper charge. To the extent that Customer has raised a bona fide dispute within the agreed period for raising disputes, Customer may withhold the disputed portion, provided the remaining payment has been received by Wifinity by the Due Date. Wifinity and the Customer shall work together in good faith to resolve any bona fide invoice enquiry or dispute notified to Wifinity under this clause 6.3(b) in accordance with clause 15.

- (c) If any payment due by the Customer to Wifinity that has not been disputed pursuant to clause 6.3(b) is not received by the Due Date then Wifinity shall be entitled, in addition to any other rights it may have under the terms of this Agreement or at law, to (i) charge and Customer shall be liable for: daily interest on outstanding amounts, at the Interest Rate from the Due Date until paid in full, and any and all costs of collection incurred by Wifinity, including, without limitation, legal costs, as a result of Customer's failure to pay; and (ii) offset such Charges, costs and interest against any amounts that Wifinity or its Affiliates owe to Customer or its Affiliates pursuant to any other agreement between the Parties.

6.4 Taxes

The Charges are exclusive of VAT, which will be added to the Services at the prevailing UK rate from time to time.

7. SECURITY

- 7.1 Customer shall be subject to Wifinity's initial and on-going credit policies and procedures. Wifinity reserves the right to withhold initiation or full implementation of any new Services pending satisfactory credit review and approval thereof, which may be conditioned upon terms specified, including, but not limited to, security for payments due hereunder in the form of a cash deposit, guarantee or irrevocable letter of credit ("Security"). In addition, in the event that (a) Customer experiences a material, adverse change to its financial position that, in Wifinity's reasonable commercial judgment, impacts Customer's creditworthiness; (b) Customer's actual usage exceeds the estimated usage on which any initial or existing credit amount was determined, or (c) Wifinity is required to issue a notice to Customer under clause 13.3(a) below three (3) times in any twelve (12) month period, then Wifinity reserves the right to require the Customer to

increase the Security. If Customer fails to provide the Security within ten (10) days of Wifinity's written demand, then Wifinity may suspend Services without liability to Customer of any kind until such Security is received.

7.2 The Customer authorises Wifinity, without prejudice to any other rights and remedies available to Wifinity, to apply any Security against any past due, undisputed, outstanding Charges. The existence of any type of Security does not affect any right of Wifinity to suspend, cancel or terminate this Agreement for non-payment by the Customer of the Charges.

7.3 Any Security in the form of a deposit or other advance payment shall, after termination of this Agreement, be refunded to the Customer without any interest and less any amounts deducted by Wifinity in accordance with clause 7.2.

8. EQUIPMENT

8.1 Service Equipment

(a) All ownership interest in Service Equipment shall at all times remain with Wifinity or a Third Party Supplier, as the case may be. Except where resulting from the negligence or wilful misconduct of Wifinity or its subcontractors, Customer shall be liable for any damage to Service Equipment installed on Premises, including, without limitation, losses due to vandalism or theft. Customer shall keep the Service Equipment free and clear of any and all liens and shall not use the Service Equipment for any purpose or in any manner other than as approved by Wifinity. Any Service Equipment in the care and custody of Customer shall be returned to Wifinity in good working order, reasonable wear and tear excepted, within thirty (30) days after termination of this Agreement or the Service to which the Service Equipment relates.

(b) The Customer shall ensure that such Service Equipment is not removed, relocated, modified, interfered with, or attached to other equipment without the prior written authorization of Wifinity or as expressly authorized by the terms of this Agreement.

(c) Wifinity shall be responsible to repair or replace, at its sole discretion and expense,

any faulty or non-operational Service Equipment located at the Premises, except where the cause of the failure of the Service Equipment is due to Customer's non-compliance with clauses 8.1(a) or 8.1(b) above.

8.2 Customer Equipment

- (a) Where Wifinity has sold Customer equipment to be used in connection with the provision of Services hereunder, or where Wifinity has otherwise notified Customer in writing that Customer must obtain certain equipment to facilitate the provision of the Services, then such equipment will be deemed to be Customer Equipment. Customer shall ensure that Customer Equipment is wholly dedicated to the provision of the Services and is configured as reasonably required by Wifinity from time to time. Where required by Wifinity, Customer will also ensure that Wifinity can dial remotely into or gain access to such Customer Equipment to ensure the proper provision of the Services. Save as otherwise set out in this Agreement, Customer will be expected to maintain/service Customer Equipment in accordance with the manufacturer's instructions and any other reasonable instructions from Wifinity, and shall ensure that Wifinity is appropriately licensed to use such Customer Equipment as reasonably anticipated by this Section.
- (b) Save as otherwise expressly set out in an Order Form, Wifinity is not responsible for the installation, maintenance, compatibility or performance of any Customer Equipment.
- (c) If any Customer Equipment impairs a Service, the Customer remains liable for the Charges.
- (d) If any Customer Equipment is likely to cause hazard or an impairment of a Service, the Customer shall promptly eliminate such likelihood at Wifinity's request.
- (e) If the Customer provides any router to interface with a Service, the Customer must cooperate with Wifinity in configuring and managing such router.

8.3 Sale of Equipment

Customer acknowledges that Wifinity is not an equipment manufacturer and where it offers to

procure equipment on the Customer's behalf, Wifinity's sole liability with respect thereto shall be to pass through to Customer any rights and remedies offered by the manufacturer.

9. PREMISES

9.1 Wifinity's Access Rights

Where Wifinity has placed Service Equipment at Premises, the Customer shall ensure that Wifinity and its representatives and agents have access to the Premises at all times in the case of emergency and otherwise at reasonable times to be agreed with the Customer to carry out any of its obligations with respect to the Service Equipment, subject always to Customer's reasonable security requirements. Notwithstanding the foregoing, where Customer delays, restricts, or otherwise denies Wifinity reasonable access to the Premises, Wifinity shall not be liable for, and Customer shall not be entitled to, service credits or other liability with respect to any interruption of Service that, but for such delay, restriction, or denial, might have been avoided.

9.2 Environment Specifications

In the event that Customer is required to house Service Equipment at the Premises, Customer shall be responsible for providing a suitable and secure environment, in compliance with the equipment manufacturer requirements, free from environmental hazards for any such Service Equipment. Customer shall be responsible for external surveillance, appropriate and redundant power supply, and fire, flood, lightning and theft protection.

10. INDEMNITY

10.1 Indemnification

Customer shall indemnify Wifinity from and against any and all claims made against Wifinity by third parties as a result of Customer's use of the Services in breach of either the terms of this Agreement or Wifinity's reasonable written instructions.

10.2 Intellectual Property Indemnification

- (a) Wifinity agrees to defend or settle any claim against Customer and to indemnify and hold Customer harmless against any damages that a court may award against

Customer, in any suit that alleges that any standard wireless broadband service of Wifinity and/or any software licensed to the Customer by Wifinity hereunder (collectively a “Service”) infringes the Intellectual Property Rights of any third party in the United Kingdom, except where the claim or suit arises out of or results from Customer’s misuse of the Service, including, without limitation, defamatory or infringing content or because of the Customer’s modification of the Service or its combination of the Service with services or products not supplied by Wifinity.

- (b) Wifinity may, at its option, either procure the right for Customer to continue using the Service or replace or modify the alleged infringing Service so that the Service becomes non-infringing. If neither of the foregoing alternatives is, in Wifinity’s reasonable opinion, commercially feasible, then Wifinity may terminate the affected Service without liability other than as stated in clause 10.2(a), provided that, Wifinity shall refund to Customer any prepaid Charges not applied to its use of the Services as of the date of termination. In the event that Wifinity is unable to provide the Service as a result of a claim under this clause 10.2, then Wifinity will cooperate with Customer to transition the Services to a new provider.

10.3 Other Obligations of the Indemnified Party

The obligations of the indemnifying party under this Clause 10 (the “**Indemnifying Party**”) are conditioned on the other Party (the “**Indemnified Party**”):

- (a) Providing prompt written notice of any actual or threatened claim or suit for which indemnification may be sought, provided that, the failure to do so shall have no effect on the Indemnifying Party’s obligations to the extent the Indemnifying Party is not prejudiced by any delay;
- (b) Ceding sole control of the defence and/or settlement of any claim to the Indemnifying Party, provided that, the Indemnified Party may participate in the defence or settlement with its own counsel and at its sole expense; and
- (c) Providing all reasonable cooperation and assistance to the Indemnifying Party, at the expense of the Indemnifying Party.

11. LIABILITY AND DISCLAIMER OF WARRANTIES

11.1 Limitation of Liability

- (a) Nothing in this Agreement shall be construed as limiting or restricting a Party's liability for death, or personal injury resulting from its negligence, breach of confidentiality, fraud, wilful misconduct or the obligation to indemnify the other Party hereunder.
- (b) The Customer acknowledges that the Services may not be fault free. Where in relation to any Service the Service Specific Terms relevant to that Service provides for a system of rebates or credits against Charges, such rebates or credits shall be the exclusive remedy of Customer in respect of such failure.
- (c) Subject to paragraph (a) above, in no event shall a Party be liable to the other Party for any Consequential Loss, regardless of the cause of action and whether or not such Consequential Loss was foreseeable, or a Party was advised of the possibility of such Consequential Loss.
- (d) Subject to paragraph (a) above, a Party's liability to the other Party for any and all damages arising out of a Party's breach of this Agreement, regardless of the cause of action, shall be limited to direct, proven damages and shall not exceed (a) for damage to property, limited to the value of the related order agreed under this MSA; and (b) for all other claims in the aggregate, an average of twelve months charges under this Agreement.
- (e) In no event shall Wifinity's Third Party Suppliers be liable to Customer for any Loss arising out of the provision of Services hereunder and Customer hereby waives the right to make a claim against any such supplier, except to the extent that Customer's cause of action is unrelated to the provision of Services hereunder.
- (f) Each of the provisions of this clause 11.1 is to be construed as a separate provision applying and surviving even if for any reason one or more of the other of the said provisions is held inapplicable or unreasonable in any circumstance. The provisions of this clause 11.1 shall apply regardless of the nature of the claim asserted; whether in contract, tort, statutory duty, strict liability or otherwise.

11.2 Disclaimer of Warranties

Save that Wifinity warrants that the services will be of satisfactory quality, all conditions and warranties implied by custom, the general law, statute or any applicable law, including, without limitation, any warranty of fitness for a particular purpose, are excluded from this agreement.

12. SUSPENSION OF SERVICE

12.1 Maintenance

Wifinity may suspend Services during the maintenance or upgrade of its Networks. In the event of routine, planned maintenance, Wifinity will provide Customer with reasonable prior written notice. For emergency maintenance, Wifinity will provide as much notice as is practical under the circumstances. In all cases, Wifinity will work with Customer to minimize disruptions to the Service.

12.2 Networks Security

Wifinity may suspend Service(s) where, in Wifinity's sole discretion, Customer's use of such Service results, or is likely to result in imminent risk to the integrity or operation of the Network of Wifinity or of its Third Party Suppliers or other end users. In addition, Wifinity may suspend one or more Services where use of the Services appears to be fraudulent or otherwise in violation of this Agreement or Applicable Law. In all such cases, Wifinity will provide Customer with as much notice as is practical under the circumstances and shall cooperate with Customer to suspend only so much of the Service(s) as may be necessary to remove the risk and only for so long as the risk remains.

13. TERMINATION OR SUSPENSION

13.1 Termination by either Wifinity or the Customer

Either Party may terminate this Agreement as a whole, including without limitation all executed Order Forms, at any time with immediate effect on the giving of written notice to the other Party if the other Party becomes or appears likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed or has any proceeding seeking such an appointment filed against it that is not dismissed within thirty (30) days thereafter, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or appears

likely to become subject to any other form of an insolvency proceeding.

13.2 Termination by the Customer

The Customer may terminate one or more Services:

- (a) Subject to clause 13.4, without cause, at any time after Wifinity's acceptance of an Order Form, by giving Wifinity not less than sixty (60) days prior written notice; or
- (b) If Wifinity is in breach of any material obligation hereunder with respect to such Service(s) and Wifinity fails to remedy such breach within thirty (30) days after receiving written notice requiring it to do so.

13.3 Termination or Suspension by Wifinity

Wifinity shall have the right to terminate or suspend, in its sole discretion, one or more Services in any of the following events:

- (a) Subject to clause 6.3(b), any Charges or sums payable remain unpaid more than fourteen (14) days after Wifinity's written notice to Customer that such Charges are past due;
- (b) Without cause after the expiration of the Minimum Contract Period by giving the Customer sixty (60) days prior written notice;
- (c) If the Customer is in breach of any material obligation hereunder other than the obligation to pay Charges when due and fails to remedy such breach within thirty (30) days after receiving written notice requiring it to do so;
- (d) Wifinity determines that it is against public policy to continue providing such Services, provided that Wifinity shall give Customer as much advance written notice as is practicable under the circumstances; or
- (e) Wifinity is prohibited from supplying a Service under any Applicable Law, provided that Wifinity shall give Customer as much advance notice as is practicable under the circumstances.

13.4 Cancellation Charge

If Customer terminates an accepted Order Form after it has been accepted by Wifinity but prior to the end of the Minimum Contract Period or then current Renewal Period, or if Wifinity terminates an Order Form during the Minimum Contract Period or then current Renewal Period due to a Customer default or Clause 13.1, then in addition to all accrued Charges up to the date of termination, Customer shall be liable for a Cancellation Charge equal to the sum of: (i) 100% of the Charges that would have been payable by the Customer if the Customer had continued to receive the Service from the date of termination until the expiry of the Minimum Contract Period or then current Renewal Period and (ii) the value of any price discounts, credits, or Charges waived by Wifinity at the time of acceptance of the Order Form. The Parties agree that the Cancellation Charge is an agreed reasonable pre-estimate of the anticipated losses suffered by Wifinity if a Service is terminated before the expiry of the Minimum Contract Period or then current Renewal Period.

13.5 Consequences of Termination

Upon the date of termination of an Agreement or a Service, as the case may be, all applicable licenses, rights and privileges granted to the Customer under this Agreement shall cease and all Charges for the Services up to and including the date of termination and all other amounts owing by Customer shall be immediately due and payable.

13.6 Survival

- (a) Termination of this Agreement will not extinguish or otherwise affect any rights of any Party against the other, which accrued before the date of termination of this Agreement.
- (b) To the extent possible, Clauses 6 (Charges and Taxes), 8 (Equipment), 10 (Indemnity), 11 (Liability and Disclaimer of Warranties), 13 (Termination and Suspension), 14 (Confidentiality and Intellectual Property Rights) and any other clause of the Agreement, which by its nature is intended to survive termination of this Agreement, will survive termination of this Agreement.

14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

14.1 Confidentiality

- (a) Each Party agrees that any and all written and/or oral information of any kind relating to this Agreement or disclosed by one Party (the “disclosing Party”) to the other Party (the “receiving Party”) pursuant to this Agreement, prior to it, or in the course of performance of it, whether or not such information is identified as being confidential at the time of disclosure (collectively, “Confidential Information”), shall remain the property of the disclosing Party, shall be treated as confidential by the receiving Party and shall be used solely for the purpose for which it is supplied, subject to the remaining provisions of this clause 14.1. The obligations of the Parties with respect to the non-disclosure and non-use of such Confidential Information shall not apply in relation to information already in the public domain or which becomes so through no fault of the receiving Party or is approved for release by prior written authorization of the disclosing Party.
- (b) Save as otherwise expressly permitted by this clause 14.1, the receiving Party shall not divulge Confidential Information other than to those employees (including employees of Affiliates) and professional advisors, who are directly involved in the performance of this Agreement, and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.
- (c) The receiving Party may disclose Confidential Information pursuant to judicial or governmental request, requirement or order, where lawfully required by such authorized institutions. The receiving Party shall, however, to the extent permissible, give the disclosing Party sufficient prior notice to contest such request, requirement or order and disclose strictly only that part of the Confidential Information that has been requested.
- (d) Upon the request of the disclosing Party or upon termination of the Agreement, the receiving Party shall return or destroy the Confidential Information provided to the receiving Party. Subject to the provisions in this clause 14.1, these obligations of confidentiality shall continue for a period of two (2) years after termination of this Agreement.

14.2 Intellectual Property Rights

- (a) The Customer agrees and acknowledges that nothing in this Agreement:
 - (i) Assigns any Intellectual Property Right of Wifinity or any third party to the Customer; or
 - (ii) Grants any license to the Customer in respect of any Intellectual Property Right of Wifinity or any third party, except for any license that Wifinity may grant pursuant to clause 14.2(b).
- (b) If Wifinity permits the Customer to use any software as part of a Service under this Agreement:
 - (i) Wifinity grants to the Customer a non-exclusive, non-sub-licensable and non-transferable license to store, run or use such software for the purposes only of using a Service;
 - (ii) The Customer must use such software in accordance with this Agreement and any additional terms and conditions that Wifinity may notify to the Customer; and
 - (iii) To the maximum extent that Applicable Law permits, the Customer must not alter, modify, adapt, translate, decompile, disassemble or reverse engineer or commercially exploit any such software.
- (c) Neither Party shall do any act or permit any act to be done which is an infringement of any Intellectual Property Rights of any other person in the performance of its duties and obligations under this Agreement.

15. DISPUTE RESOLUTION

The Parties will work together in good faith to amicably settle any dispute or difference that arises between the Parties in respect of any aspect of this Agreement promptly by negotiations between management representatives of the Parties with authority to settle the dispute. In the event that the dispute or difference has not been settled within thirty (30) days of the date that a Party

receives written notification of the dispute or difference, then either Party may elect instead to rely on its rights at law, including the right to institute arbitration proceedings. Notwithstanding the foregoing, the dispute resolution procedure described in this clause 15 does not prevent a Party from seeking urgent interlocutory relief.

16. GOVERNING LAW AND JURISDICTION; WAIVER OF IMMUNITY

- (a) This Agreement will be interpreted in accordance with the laws of England, without reference to its provisions on conflicts of laws, and the Parties agree to refer to the English courts any dispute not settled pursuant to Clause 15 above.
- (b) The Parties acknowledge that this Agreement is commercial in nature and each Party, to the extent applicable, expressly and irrevocably waives any claim or right which it may have to immunity, including, without limitation, sovereign immunity, act of state, or otherwise, for itself or with respect to any of its assets in connection with any proceeding to enforce this Agreement.

17. PERSONAL DATA AND PRIVACY

- (a) The Customer acknowledges that Wifinity, its Wifinity Affiliates and their respective agents will, by virtue of the provision of Services, come into possession of Personal Data of the Customer.
- (b) Wifinity shall implement appropriate technical and organisational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing, and shall correct any inaccurate information held by it free of charge.
- (c) The Customer acknowledges and agrees that Wifinity, its Wifinity Affiliates and their respective agents may use, process and/or transfer Personal Data (including intra-group transfers and transfers) in accordance with data transfer agreements which meet or exceed in every respect the requirements of the EU Model Clauses Agreement, which was current as at the date such agreements were entered into, and that such transfers may occur:

- a. in connection with the provision of Services;
 - b. to incorporate Personal Data into databases controlled by Wifinity or its Wifinity Affiliates for the purpose of (i) administration, provisioning, billing and reconciliation, (ii) verification of Customer identity and solvency, (iii) maintenance, support and product development, (iv) fraud detection and prevention, (v) sales, revenue and customer analysis and reporting, market and customer use analysis, and
 - c. to communicate to the Customer by voice, letter, or electronic means regarding products and services of Wifinity or its Wifinity Affiliates.
- (d) The Customer may withdraw consent for such use, processing or transfer of Personal Data as set out in Clause 17(c)c, by sending written notice to Wifinity in accordance with the prescribed form, available from Wifinity on request.
- (e) The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Personal Data as described in this Clause 17.

18. GENERAL PROVISIONS

- 18.1 Assignment.** Neither Party may assign any or all of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that, Wifinity may assign this Agreement, in whole or in part, to any Affiliate, to its successor in the event of a reorganization or merger, or to any purchaser of all, or substantially all, of the assets to which this Agreement relates.
- 18.2 Export Control.** The Parties acknowledge that certain equipment, encryption products, software, and Confidential Information provided under this Agreement may be subject to export laws and regulations of the United States, the European Union and other countries (cumulatively, “Export Laws”). Each Party agrees that it will not use, distribute, export, re-export, transfer, or transmit such equipment, encryption products, software, or Confidential Information (even if incorporated into other items) in violation of applicable

Export Laws

18.3 Force Majeure. Except with respect to Customer's obligation to pay Charges, neither Party shall be liable for any Loss resulting from delay or failure to perform this Agreement, either in whole or in part, where any such delay or failure is due to a Force Majeure Event.

18.4 Notice. Any notice required to be given hereunder shall be sufficiently given if sent by hand, facsimile transmission, or post addressed to the following addresses:

If to Wifinity:

5th Floor, The Grange, 100 High Street, Southgate, London, N14 6BN, United Kingdom

with a copy of all legal notices to legal@wifinity.co.uk

cancellation notices should be copied to support@wifinity.co.uk

Billing Disputes shall be sent to the payment address stated in the applicable invoice.

If to Customer:

[Legal Notice and other relevant addresses]

Any such notice shall be deemed to have been received: (a) if by hand delivery, when it is delivered; (b) if by mail, three (3) days after posting (intra United Kingdom) or seven (7) days after posting if posted to or from a place outside the recipient's home country; and (c) if by facsimile, at time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

18.5 Entire Understanding. This Agreement embodies the entire understanding between the Parties in relation to the Services and supersedes all prior agreements, representations and understandings of the Parties, written or oral, with respect to such Services. In entering into this Agreement the Parties do not rely on any representations or warranties in relation to a Service except as expressly provided in this Agreement. This Agreement may only be amended by a signed written agreement between the Parties.

18.6 Non-Waiver. No failure, or delay on the part of the Parties to exercise any right, power

or remedy under this Agreement shall operate as a waiver of that power or right unless expressed in writing to be a waiver.

- 18.7 Severability.** If any provisions of this Agreement shall be construed to be illegal or invalid, they shall not affect the legality, validity and enforcement of the other provisions of this Agreement. The illegal or invalid provision shall be deleted from this Agreement and no longer incorporated in this Agreement but all other provisions of this Agreement shall continue to have full force and effect.
- 18.8 Third Party Beneficiaries.** Nothing in this Agreement expressly or impliedly provides any third party (other than the Parties' permitted successors and assignees) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.
- 18.9 Relationship of the Parties.** Wifinity and Customer are independent contractors and nothing in this Agreement shall be deemed to constitute a partnership, agency or joint venture between the Parties.
- 18.10 Counterparts.** This Agreement, or any amendment to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
- 18.11 Language.** If this Agreement is executed by the Parties in more than one language, the English language version shall control. The annexes, schedules, appendices or other attachments to this Agreement are presented in English only. The failure of Wifinity to provide translations of any such annexes, schedules, appendices or other attachments shall not be deemed a breach of this Agreement nor shall it form the basis of a bona fide dispute by the Customer.



By their signatures below, the Parties hereby agree to the terms and conditions set forth herein as of the Effective Date.

WIFINITY LIMITED

CUSTOMER NAME

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date signed: _____

Date signed: _____