

## Terms and Conditions

These Terms and Conditions consist of the following Parts:

Part 1 General Terms

Part 2 Professional Service Terms

Part 3 Goods Terms

Part 4 SaaS Terms

Part 5 SIM Terms

***The Customer's particular attention is drawn to clause 1.16 (Limitations of Liability) and 4.8 (Changes to SaaS Services and Terms).***

### **1. Part 1: General Terms**

#### **1.1 Definitions**

##### **1.1.1** The following definitions and rules of interpretation apply in these Terms.

**Agreement** means the contract between the Company and the Customer for the supply and purchase of the Products in accordance with these Terms;

**AUP** means the Acceptable Use Policy published at <https://www.radiocomms.co.uk/acceptable-use-policy/> as amended from time to time;

**Authorised Users** means the officers, employees, agents, consultants or independent contractors of the Customer or any End Customer who have been expressly authorised by them to use the SaaS Services in accordance with the Agreement;

**Business Day** means a day other than a Saturday, Sunday or public holiday in London;

**Business Hours** means 9:00am to 5:30pm local UK time, on each Business Day;

**Charges** means the charges payable to the Company by the Customer in consideration of the Products as further detailed in clause 1.4;

**Commencement Date** means the applicable commencement date identified in the Order or otherwise agreed in writing between the Customer and the Company;

**Company** means Radiocom Systems Limited, registered in England and Wales with company number 04544886, whose registered office is at Units 2 & 3, The Chase Centre, 8 Chase Road, Park Royal, London NW10 6QD.

**Company Materials** means all materials, equipment, documents and other property of the Company;

**Confidential Information** has the meaning given in clause 1.12.1;

**Customer** means the party purchasing Products from the Company;

**Customer Data** means all data (in any form) that is provided to the Company or uploaded or hosted on any part of any SaaS Services by the Customer, End Customer or any Authorised User (but excluding Feedback);

**Customer Materials** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Company in connection with the Services, excluding Feedback but including Customer Data;

**Day Rates** means the Company's standard daily support rates published at as amended from time to time;

**Deliverables** means any output of the Services to be provided by the Company to the Customer and identified in the Order;

**Delivery Location** means the locations to which Goods/SIM Cards are to be delivered as specified in Order, or such other location as the parties may agree at any time after the Company notifies the Customer that the Goods/SIM Cards are ready;

**DPA** means the data processing agreement of the Company published at <https://www.radiocom.co.uk/data-processing-agreement/> as amended from time to time;

**Documentation** means the service description and training materials and user manuals relating to the SaaS Services, or to assist in the correction of any issue with the SaaS Services made available by the Company;

**Effective Date** has the meaning given in clause 1.3.2;

**End Customer** means a customer to which the Customer resells the Products;

**Feedback** has the meaning given in clause 1.10.3

**Force Majeure Event** means any event or circumstance outside the reasonable control of a party including

- (a) acts of God, storm, flood, earthquake or other natural disaster;

- (b) fire, explosion, collapse of buildings or accident;
- (c) acts of the public enemy, war, treat of or preparation for war, armed conflict, terrorist act, rebellion, insurrection, riot, civil commotion, sabotage, sanctions, embargos, the breaking off of diplomatic relations;
- (d) epidemic, pandemic or quarantine restrictions,
- (e) labour dispute, labour shortage, strike, lockout or other industrial dispute;
- (f) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (g) interruption or failure of utility services;
- (h) non-performance by suppliers or sub-contractors;
- (i) third party hacking, denial of service attack, viruses, trojans, worms, logic bombs or other malicious code, denial-of-service attack;

**Functional Description** means the functional description or specification of the Products referred to in the Order or otherwise agreed in writing between the Company and the Customer;

**General Terms** means the terms and conditions in Part 1 of these Terms;

**Goods** means the goods (or any part of them) identified in the Order which for the avoidance of doubt does not include SIMs;

**Goods Terms** means the terms and conditions set out in Part 3 of these Terms;

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

**Order** means the Customer's order for the supply of Products whether submitted in writing or verbally;

**Order Confirmation** means a written order confirmation sent by the Company to the Customer, agreeing to fulfil an Order and confirming the applicable Order Number;

**Order Number** means the number applied to an Order by the Company and confirmed in the Order Confirmation;

**Privacy Policy** means the privacy policy of the Company published at <https://www.radiocom.co.uk/privacy-policy/> as amended from time to time;

**Products** means the Goods, Professional Services, SaaS Services and SIM Services to be supplied to the Customer by the Company;

**Professional Services** means the professional services including the Deliverables supplied by the Company as identified in the Order;

**Professional Service Terms** means the terms and conditions set out in Part 2 of these Terms;

**Representatives** means employees, officers, representatives contractors, subcontractors or advisers;

**SaaS Services** means the SaaS services to be supplied by the Company as identified in the Order;

**SaaS Terms** means terms and conditions set out in Part 4 of these Terms;

**Services** means the services including the Professional Services, the SIM Services and the SaaS Services to be supplied by the Company as identified in the Order;

**SIM(s) or SIM Card(s)** means ‘subscriber identity module’(s) that allow Authorised Users to access and use the SIM Services;

**SIM Services** means the mobile telecommunications services specified in the Order;

**SIM Services Terms** means the SIM Services Terms in Part 5 of these Terms;

**SLA** means the service level agreement of the Company published at <https://www.radiocom.co.uk/service-level-agreement/> as amended from time to time;

**Term** means the term of the Agreement or the term of an Order as set out in that Order, as applicable;

**Terms** means the terms and conditions set out in Part 1 General Terms and as applicable Part 2 Professional Service Terms, Part 3 Goods Terms, Part 4 SaaS and Part 5 SIM Terms as amended from time to time in accordance with their terms; and

**VAT** means United Kingdom value added tax, any other tax imposed in substitution for it.

- 1.1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.1.3 A reference to a party includes its successors or permitted assigns.
- 1.1.4 A reference to legislation or a legislative provision is a reference to such legislation or legislative provision as amended or re-enacted. A reference to legislation or a legislative provision includes any subordinate legislation made under that legislation or legislative provision.
- 1.1.5 Any phrase introduced by 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 preceding those terms.
- 1.1.6 A reference to writing or written includes e-mails.
- 1.1.7 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.
- 1.1.8 Any obligation on the Customer not to do something shall include an obligation not to allow that thing to be done.
- 1.2 Quotations
  - 1.2.1 No quotation given by the Company shall constitute an offer.
  - 1.2.2 Quotations are only valid for such period as stated in the quotation or if no such period is stated a period of 20 Business Days from its date of issue unless withdrawn earlier by the Company. The Company may withdraw a quotation at any time without notice.
- 1.3 Ordering and Formation of the Contract**
  - 1.3.1 The Order constitutes an offer by the Customer to purchase Products from the Company in accordance with the terms of the Agreement.
  - 1.3.2 The Order shall only be deemed accepted when the Company issues an Order Confirmation at which point and on which date (the **Effective Date**) the Agreement shall come into existence.
  - 1.3.3 After an Order Confirmation has been issued the Customer cannot cancel the Order unless the Company agrees in writing to permit a cancellation, including in relation to Goods as set out at clause 3.3.11.
  - 1.3.4 These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 1.3.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Terms.
- 1.3.6 If and to the extent there is any inconsistency between the provisions of any applicable part of these Terms or other documents referred to therein the following order of precedence shall apply:
- (a) the DPA
  - (b) the applicable terms in Parts 2 to 5 of these Terms;
  - (c) the General Terms;
  - (d) the AUP;
  - (e) the SLA.

#### 1.4 Charges and Expenses

- 1.4.1 Subject to variation in accordance with this Agreement the Charges shall be the charges identified in the Order or, if no charges are so identified
- (a) in respect of Goods and SaaS Services the charges set out in the Company's published price list as available via the Customer Portal as at the date of the Order;
  - (b) in respect of Professional Services shall be calculated on a time and material basis in accordance with clause 1.4.6.
- 1.4.2 In respect of SIM Services the Charges are based on the tariff identified in the Order in relation to a SIM Card. Where applicable the tariff may include Charges for data usage in excess of the contractual allowance. The AUP will apply to all SIM Card usage.
- 1.4.3 The Customer may request a tariff change for any SIM Cards by making a request:
- (a) for an upgrade at any time during the Term;
  - (b) for a downgrade at any time after the expiry of the Minimum SIM Contract Term.

The Company will use its reasonable endeavours to facilitate such requests for tariff changes subject to the availability of applicable tariffs.

- 1.4.4 The Customer shall be liable to pay any Charges incurred for SIM Services as a result of continued use of a SIM Card after the end or earlier termination of the Term of the applicable Order and before disconnection of the SIM Card (if later).

- 1.4.5 The Company is entitled to charge the Customer for any expenses reasonably incurred by individuals whom the Company engages in connection with the Professional Services including travel expenses, hotel costs, subsistence and any associated expenses and the cost of services provided by third parties and required by the Company for the performance of the Professional services and for the costs of any materials.
- 1.4.6 Where the Charges are calculated on a time and material basis:
- (a) the Day Rates shall apply;
  - (b) (unless the applicable Day Rate is stated to be chargeable per device or per person) the Day Rates shall be charged based upon an individual working 7.5 hours during Business Hours;
  - (c) the Company shall be entitled to charge an overtime rate of 150% of the applicable Day Rate on a pro-rata basis for any time worked by individuals outside Business Hours.
- 1.4.7 The Company reserves the right to increase the Charges by giving notice to the Customer for;
- (a) Goods at any time before delivery of such Goods and/or
  - (b) Professional Services at any time before commencement of the Professional Services;
  - (c) SaaS Services and/or SIM Services, before the Commencement Date;
- to reflect any increase in the cost of the Goods and/or Services to the Company that is due to:
- (i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs, and increases in other costs and expenses of the Company such as costs charged by third party suppliers and network providers);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered or any applicable Functional Description; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods and/or Services.

- 1.4.8 Without prejudice to the Company's rights under clause 1.4.6 the Company further reserves the right to increase any Charges for Services (including but not limited to the Day Rates) other than SaaS Services or SIM Services at any time provided that the Company shall give the Customer written notice of any such increase at least 1 month before the proposed date of the increase and if such increase is not acceptable to the Customer, the Customer may terminate the Agreement by giving at least 1 week's written notice to the Company provided such notice is given within 3 weeks' of the Company notifying the Customer of the increase.
- 1.4.9 The Company will generally only increase the Charges for SIM Services at the end of the term of the applicable Order but may increase the Charges at any time on 60 days' written notice if the Network Provider (as defined in Part 5) increases its charges to the Company. If the increase is in excess of the current UK Retail Price Index, the Customer has the right to terminate the Agreement upon giving written notice to the Company within 30 days of notification of the proposed increase. Upon expiry of the notice period the new Charges will apply to the Services.
- 1.4.10 The Company reserves the right to increase its Charges for SaaS Services at the end of any Subscription Term and shall give the Customer 60 days' written notice prior to the end of the relevant Subscription Term.
- 1.4.11 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Agreement by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Products at the same time as payment is due for the supply of the Products.
- 1.5 Invoicing and Payment
- 1.5.1 The Company shall invoice the Charges as set out in the Order or if the Order does not set out such information:
- (a) in respect of Goods, the Company may invoice at any time after completion of Delivery;
  - (b) in respect of Professional Services, the Company will invoice monthly in arrears;
  - (c) in respect of SaaS Services and SIM services, the Company will invoice monthly in advance in respect of standard charges save that where usage exceeds inclusive amounts where such amounts shall be invoiced in arrears.
- 1.5.2 If the Customer believes that any invoice is incorrect, it must notify the Company in writing within 14 days of the invoice date.



- 1.5.3 The Customer shall pay all invoices submitted by the Company within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer, in cleared funds to the bank account nominated by the Company.
- 1.5.4 Time for payment of invoices shall be of the essence of the Agreement.
- 1.5.5 All amounts due from the Customer under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 1.5.6 This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.
- 1.5.7 If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Company, the Customer shall increase the sum it pays to the Company by the amount necessary to leave the Company with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 1.5.8 If the Customer fails to make any payment due to the Company under the Agreement by the due date for payment, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay interest together with the overdue amount.
- 1.5.9 The Company reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.
- 1.6 The Customer obligations
- 1.6.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
  - (b) check the details of the Order Confirmation on receipt, if the Customer considers there is a mistake in the Order Confirmation the Customer must notify the Company immediately;
  - (c) ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Materials and that its use (including use in connection with the Products) complies with all applicable laws and IPRs;

- (d) comply with (and ensure any End Customer, Authorised User and End User complies with) the AUP. The Company may amend the AUP in its sole and absolute discretion from time to time;
  - (e) comply with (and ensure any End Customer Authorised User and End User comply with) all applicable laws and regulations in connection with the Agreement and/or the Products; and
  - (f) comply with any other Customer obligations set out in the Agreement including where applicable Parts 2 to 5 of these Terms.
- 1.6.2 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Customer prior to the relevant shipment.
- 1.6.3 The Customer shall be liable for the acts and omissions of End Customers, Authorised Users and End Users as if they were its own.
- 1.7 Customer Default
- 1.7.1 If the Company's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of 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 Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely upon the Customer Default to relieve the Company from performance of any of the Company's obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay in performing any of its obligations as set out in this clause 1.7.1(a); and
  - (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 1.8 Termination
- 1.8.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
  - (b) the other party takes any step or action or is the subject of any action or order in connection with its:
    - (i) entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring);
    - (ii) obtaining a moratorium;
    - (iii) being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring);
    - (iv) having a receiver appointed to any of its assets;
    - (v) ceasing to carry on business;
    - (vi) bankruptcy; or
    - (vii) if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party being an individual dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
  - (d) 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.
- 1.8.2 Without affecting any other right or remedy available to it, the Company may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment;
  - (b) the Customer fails to pay any amount due under other contract between the Company and the Customer on the due date for payment;
  - (c) the Company is prohibited by any applicable law or regulation from providing any of the Products.
- 1.8.3 Without affecting any other right or remedy available to it the Company may terminate the Agreement at any time if any Products or the sale thereof are discontinued by the Company or any third-party manufacturer, supplier or provider.

- 1.8.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Agreement or any other contract between the Customer and the Company, if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer exceeds any agreed credit limits agreed between the Customer and the Company, the Company becomes subject to any of the events listed in clauses 1.8.1(b) to 1.8.1(d) or the Company reasonably believes that the Customer is about to become subject to any of them.
- 1.9 Consequences of Termination
- 1.9.1 On termination of the Agreement:
- (a) the Customer shall immediately pay to the Company:
    - (i) all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
    - (ii) all amounts payable pursuant to clauses 4.9.2 and/or 5.9.7;
  - (b) all licences granted under the Agreement shall immediately terminate;
  - (c) the Customer shall cease using the SaaS Services, SIMs and SIM Services;
  - (d) the Customer shall return all of the SIMs, the Company Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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 this Agreement.
- 1.9.2 In the event that the Customer has pre-paid any amounts in respect of the Products, the Company will only credit the Customer for any unearned portion of the pre-paid amounts in the event that the Company terminates the Agreement early without cause or the Customer terminates early with cause. In all other circumstances the Company will not provide credit for any unearned portion of any pre-paid amounts.
- 1.9.3 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 1.9.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

#### 1.10 Company IPR

- 1.10.1 Save as expressly specified in the Agreement all IPR in or arising out of or in connection with the Products, the Deliverables and Documentation and any Company Material (other than IPR in any materials provided by the Customer) shall be owned by the Company or the relevant third-party owner and no rights, interest or ownership is transferred or granted to the Customer under the Agreement.
- 1.10.2 The Customer shall not remove any proprietary marks or copyright notices from the Products, Deliverables, Documentation or Company Material.
- 1.10.3 The Company may use any feedback and suggestions for improvement relating to the Products provided by the Customer, End Customer, End User or any Authorised User without charge or limitation (**Feedback**). The Customer hereby assigns (or shall procure the assignment of) all IPR in the Feedback with full title guarantee (including by way of present assignment of future IPR) to the Company at the time such Feedback is first provided to the Company.

#### 1.11 Customer IPR

- 1.11.1 Save as expressly specified in the Agreement, all IPR in the Customer Material shall be owed by the Customer or relevant third-party owner.
- 1.11.2 The Customer grants the Company (and its direct and indirect subcontractors) a fully paid-up, non-exclusive, royalty-free non-transferable licence to use, copy, modify and otherwise utilise:
  - (a) any Customer Materials; and
  - (b) the Customer's name, logo and trademarks;to the extent necessary to perform or provide the Services or to exercise or perform the Company's rights, remedies and obligations under the Agreement.
- 1.11.3 The Company may use the Customer's name, logo and trademarks to list the Customer as a client of the Company on the Company's website and in other marketing materials and information.
- 1.11.4 The Customer:
  - (a) warrants that the receipt and use of the Customer Materials in the performance of the Agreement by the Company, its agents, subcontractors or consultants shall not infringe the rights, including any IPRs, of any third party; and
  - (b) shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs

(calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim brought against the Company, its agents, subcontractors or consultants for actual or alleged infringement of a third party's IPRs arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

## 1.12 Confidential Information

1.12.1 Each party (the **Receiving Party**) undertakes that it shall not at any time disclose to any person any confidential information (however recorded or preserved) disclosed to it or its Representatives by the other party or its Representatives (the **Disclosing Party**) in connection with the Agreement or the provision of the Products including but not limited to any information that would be regarded as confidential by a reasonable business person relating to the Disclosing Party's (or any member of the group of companies to which the Disclosing Party belongs:

- (a) business, assets, affairs, finances, customers, clients, suppliers, or plans, intentions, or market opportunities; and
- (b) the operations, processes, product information, know-how, designs, trade secrets or software;

(**Confidential Information**) except as permitted by clause 1.12.2

1.12.2 A Receiving Party may disclose Confidential Information:

- (a) to its Representatives who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under or in connection with the Agreement. The Receiving Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the Confidential Information comply with this clause 1.12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

1.12.3 If a Receiving Party is required to disclose any Confidential Information pursuant to clause 1.12.2(b) such Receiving Party shall, where lawfully permitted to do so:

- (a) promptly consult with, and take into account any comments from the Disclosing Party prior to making any disclosure; and
- (b) where required by the Disclosing Party, work with the Disclosing Party and at the Disclosing Party's cost to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.

- 1.12.4 A Receiving Party shall not use any Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 1.12.5 Both parties agree to on request return or destroy all documents, materials or data containing Confidential Information of the other without delay upon completion of the Services or termination or expiry of the Agreement.
- 1.12.6 The obligations of confidentiality under the clause 1.12 do not extend to information that:
- (a) was in the Receiving Party's lawful possession before the commencement of negotiations leading to the Agreement; or
  - (b) is or becomes publicly known other than through any act or omission of the Receiving Party; or
  - (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
  - (d) is independently developed by the Receiving Party, which independent development can be shown by written evidence.

#### 1.13 Customer Data

The Company understands that data may be valuable however data loss during provision of the Products is always a possibility, and in some cases, data may be unrecoverable, erased, or reformatted. It is therefore the Customer's responsibility to back up all existing data, software, and/or programmes, and to decide whether to erase any such data, prior to entering into the Agreement.

#### 1.14 Data Protection

- 1.14.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 1.14.2 The Company's Privacy Policy explains how the Company uses personal data it receives as a data controller. The Company may amend the Privacy Policy in its sole and absolute discretion from time to time.
- 1.14.3 Where the Company is processing personal data as a data processor the Company and the Customer shall comply with the terms of the DPA.

## 1.15 Warranties

### 1.15.1 Each party warrants to the other that:

- (a) it has full power and authority to enter into the Agreement and to perform the obligations required hereunder; and
- (b) the execution and performance of its obligations under the Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws.

### 1.15.2 The Company has given various contractual commitments relating to the Products in the Terms, in view of these commitments the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

## 1.16 Liability

### 1.16.1 The restrictions on liability in this clause 1.16 apply to every liability arising under or in connection with the Agreement or its subject matter including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

### 1.16.2 Nothing in the Agreement shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale or Goods Act 1979 or 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) defective products under the Consumer Protection Act 1987.

### 1.16.3 Subject to clause 1.16.2, the Company's total liability to the Customer in respect of each Order for events arising within any contract year shall not exceed the cap.

### 1.16.4 For the purposes of clause 1.16.3:

- (a) **cap** means one hundred percent (100%) of the total charges in the contract year under the Order in connection with which the cause of action arose.
- (b) **contract year** means a 12-month period commencing with the Effective Date or any anniversary of it; and
- (c) **total charges** means all sums paid by the Customer to the company in respect of Products in the Order in relation to which the cause of action arises.



1.16.5 Subject to clauses 1.16.2 and 1.16.6 the Company shall not be liable for the following types of loss:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss or anticipated savings;
- (e) loss of use or corruption of software data or information
- (f) loss or damage to goodwill;
- (g) indirect or consequential loss.

1.16.6 The following types of loss and specific loss are not excluded:

- (a) sums paid by the Customer to the Company pursuant to the Agreement in respect of any Products not provided in accordance with the Agreement; and
- (b) wasted expenditure.

1.16.7 Unless the Customer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

1.17 Force Majeure

1.17.1 Provided it has complied with clause 1.17.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement, other than the Customer's payment obligations, by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

1.17.2 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 1.17.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 months, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.
- 1.17.4 The provisions of this clause 1.17 shall not apply to the Customer's payment obligations.
- 1.18 Dispute Resolution
  - 1.18.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 1.18.
  - 1.18.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen (**Dispute Notice**). The notice shall include reasonable information as to the nature of the dispute.
  - 1.18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
    - (a) first the contract managers/sales directors or equivalent of each party shall seek to resolve the dispute through amicable discussions;
    - (b) if the above amicable discussions do not resolve the dispute within 30 days of the Dispute Notice, the dispute shall be escalated in writing to the chief operating officer of the Company and the chief financial officer of the Customer who shall in good faith try and resolve the dispute.
  - 1.18.4 Until the parties have completed the steps referred to in clause 1.18.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.
- 1.19 Third Party providers

The Customer acknowledges that the Products may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Company makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Company. The Company recommends that the

Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Company does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 1.20 General

### 1.20.1 Notices

- (a) Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:
  - (i) 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
  - (ii) add url here...
- (b) Any notice 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 email, at the time of transmission, or, if this time falls outside Business Hours, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### 1.20.2 No Partnership or Agency

The parties to the Agreement are independent contractors and nothing in the Agreement is intended to or shall be deemed to establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 1.20.3 Assignment and other dealings

- (a) The Company 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 Agreement.
- (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 Agreement without the prior written consent of the Company, such consent not to be unreasonably withheld.

#### 1.20.4 Rights and Remedies

Except where expressly stated to the contrary all rights and remedies provided under this Agreement are culminative, non-exclusive and in addition to, any rights or remedies provided by law or otherwise.

#### 1.20.5 Announcements

Save as permitted under clause 1.11.3 no party shall make any public statement, press release or other announcement relating to the terms or existence of the Agreement, or the business relationship of the parties, without the prior written consent of the other party.

#### 1.20.6 Set-off

The Company may set off any amount owing to it by the Customer under this Agreement or otherwise against any amount payable by the Company to the Customer.

#### 1.20.7 Severance

- (a) If any provision or part provision of the Agreement 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 the Agreement.
- (b) If any provision or part provision of the Agreement is deemed deleted under clause 1.20.7(a) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

#### 1.20.8 Variations

- (a) Save as expressly permitted by the terms of this Agreement no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- (b) The Company may vary the terms of the Agreement where such is required to comply with any applicable law provided that:
  - (i) the Company shall give the Customer at least 30 days' written notice of any such variation; and
  - (ii) the Customer may terminate the Agreement without penalty if it objects to such variation on reasonable grounds prior to the expiry of the 30 day notice period.

#### 1.20.9 Waiver

- (a) A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Agreement 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 this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 1.20.10 Entire Agreement

- (a) The Agreement 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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

#### 1.20.11 No Third Party Rights

The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.

#### 1.20.12 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into the Agreement and grant to the other the rights (if any) contemplated in the Agreement and to perform its obligations under the Agreement.

#### 1.20.13 Governing Law & Jurisdiction

- (a) The Agreement 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.
- (b) 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 Agreement or its subject matter or formation.

- (c) For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Agreement. The International Chamber of Commerce's (ICC) Incoterms® Rules ('**Incoterms**') shall not apply other than in relation to Goods where they are expressly stated to apply in the applicable Order.

## **2 Part 2: Professional Service Terms**

### **2.1 Application of these Professional Service Terms**

These Professional Service Terms form part of the Agreement only if the Customer is purchasing Professional Services under the Agreement.

### **2.2 Supply of Professional Services**

- 2.2.1 The Company shall use reasonable endeavours to supply the Professional Services and deliver the Deliverables in all material respects in accordance with the agreed scope of works ('**SOW**') which shall be appended to the applicable Order, and the Functional Description.

- 2.2.2 The Company shall use all reasonable endeavours to meet any performance dates for the Professional Services referred to in the SOW or otherwise agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Professional Services.

- 2.2.3 The Company shall have the right to make changes to the Professional Services and/or their Functional Description:

- (a) if necessary to comply with any applicable law, regulation or safety/security requirement, or
  - (b) which do not materially degrade the nature or quality of the Professional Services, and

the Company shall notify the Customer in the event any material change is made.

### **2.3 Licence to use the Deliverables**

Subject to the payment of the Charges, the Company grants to the Customer a non-exclusive, non-transferable, royalty free licence to use the Deliverables (excluding Customer Materials) for the purposes of the receiving and using the Services and the Deliverables for its internal business purposes. Where a specific End Customer is

identified in the Order then this licence will be sublicensable only to allow that specific End Customer to use the Deliverables for its internal business purposes.

## 2.4 Warranties

- 2.4.1 The Company warrants that the receipt, use and onward supply of the Professional Services and the Deliverables by the Customer and any End Customer as permitted by the Agreement shall not infringe the rights, including any IPR of any third party.
- 2.4.2 The Company warrants that the Professional Services shall be performed with reasonable skill and care and in a professional manner.
- 2.4.3 If there is a breach of the warranty at clause 2.4.2, the Company shall at its option reperform the defective element of the Services or refund the price or a reasonable proportion thereof to reflect the defective element of the Services provided the Company is notified by the Customer promptly in writing upon discovery of the defect. Such reperformance or refund constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in Clause 2.4.2.
- 2.4.4 All third party content or information provided by the Company via the Deliverables, for example prices is provided "as is". The Company provides no warranties in relation to such content or information and shall have no liability whatsoever for use or reliance upon such content or information.

## 2.5 Customer Obligations

- 2.5.1 The Customer shall:
  - (a) cooperate and ensure any End Customer cooperates with the Company in all matters relating to the Professional Services;
  - (b) provide the Company with such information and materials as the Company may reasonably require to supply the Professional Services and ensure that such information is accurate in all material respects;
  - (c) provide the Company, its employees, agents, consultants and subcontractors, with access to such premises, office accommodation and other facilities as reasonably required by the Company to provide the Professional Services;
  - (d) obtain and maintain any necessary licences, permissions and consents which may be required for the Professional Services before the date on which the Professional Services are to start;
  - (e) keep and maintain all Company Materials in the Customer's or any End Customer's possession or at the Customer's or any End Customer's premises in safe custody at the Customer's risk and maintain the Company

Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

- (f) ensure reasonable security measures (as may change over time) are maintained in relation to the receipt of the Professional Services and use of the Deliverables including treating any password or username or other security device for use of the Deliverables with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing;
- (g) ensure that its network and systems and those of any End Customer comply with all relevant requirements notified in writing to the Customer by the Company. The Customer acknowledges that as between the Customer and the Company it is solely responsible for procuring and maintaining network connections and telecommunications links from its and any End Customer's systems and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's or any End Customer's network connections or telecommunications links or caused by the Internet.

## 2.6 Contacts

- 2.6.1 The Customer shall provide a designated support contact who will be responsible for and have sufficient information to respond to support questions raised by the Company.
- 2.6.2 The Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding the Professional Services.

## 3 Part 3: Goods Terms

### 3.1 Application of these Goods Terms

These Goods Terms form part of the Agreement only if the Customer is purchasing Goods under the Agreement.

### 3.2 Goods

- 3.2.1 The Customer shall purchase and the Company will supply the Goods specified in the Order.



- 3.2.2 The Company reserves the right to make changes to the Goods and/or their Functional Description:
- (a) if necessary to comply with any applicable law, regulation or safety/security requirement; or
  - (b) which do not materially degrade the nature or quality of the Goods; and
- the Company shall notify the Customer in the event any material change is made.
- 3.2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations on the Company's website in any catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 3.3 Delivery of the Goods
- 3.3.1 The Company shall deliver the Goods to the Delivery Location or in accordance with applicable Incoterms as set out in the Order.
- 3.3.2 Any dates quoted for delivery of the Goods are approximate only, and time of delivery is not of the essence.
- 3.3.3 The Customer acknowledges that the Company currently has long lead times of most goods due to supply chain issues and on average lead times are currently between 3 and 6 months but this varies depending of the specific goods and the Company recommends the Customer seeks further information on goods specific lead times from the Company before placing an Order.
- 3.3.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 3.3.5 The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 3.3.6 If the Customer fails to accept or take delivery of the Goods within two (2) Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Agreement in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready; and

- (b) the Company shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 3.3.7 If ten (10) Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.
- 3.3.8 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the applicable invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.3.9 The Company may deliver the Goods in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.3.10 The Customer must notify the Company within 48 Business Hours of any short shipment or other material error ("**Error**") in any delivery made by the Company to the Customer. If the Customer fails to notify the Company in accordance with this clause, the Company shall have no liability whatsoever for the Error.
- 3.3.11 The Company may, at the Company's sole discretion, agree to permit the Customer to cancel an Order for Goods that it has ordered in error on terms that indemnify the Company against any losses it incurs as a result of the cancellation of the Order. If the Goods ordered in error have already been shipped by the Company, such terms will include:
  - (a) return of the Goods within 30 days from the date of the original invoice for the Goods;
  - (b) that the Goods are when received back by the Company unopened and in their original packaging and considered by the Company in its sole discretion to be suitable for resale by the Company; and
  - (c) a fee of 20% of the value of the Goods plus shipping payable by the Customer.
- 3.4 Clause 3.3.11 will not apply to bespoke or customised items ordered by the Customer.
- 3.5 Title and Risk
  - 3.5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
  - 3.5.2 Title to the Goods and any licence to use any software in the Goods shall not pass to the Customer until the earlier of:

- (a) the Company receiving payment in full (in cash or cleared funds) for the Goods and if applicable any software licence fees in which case title to these Goods shall pass and the licence to the relevant software shall be granted at the time of payment; and
- (b) the Customer resells those Goods, in which case title to those Goods shall pass to the Customer at the time specified in Clause 3.5.4(b).

3.5.3 Until title to Goods has passed to the Customer, the Customer shall:

- (a) store those Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Goods;
- (c) maintain those Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Company. The Customer shall obtain an endorsement of the Company's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Company to inspect those Goods and the insurance policy; and
- (d) give the Company such information as the Company may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

3.5.4 Subject to Clause 3.5.5, and provided that the Customer is not in default of its payment obligations to the Company based on or in connection with this Agreement the Customer may resell or use Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before the Company receives payment for them::

- (a) it does so as principal and not as the Company's agent;
- (b) title to those Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs; and
- (c) the Customer hereby assigns to the Company (which hereby accepts such assignment) its payment claim towards its own customers resulting from such resale, effective when such payment claim arises. The Customer shall be entitled to collect such payments if it is not in default with its payment

obligations towards the Company based on or in connection with this Agreement.

3.5.5 At any time before title to the Goods passes to the Customer, the Company may:

- (a) by notice in writing, terminate the Customer's right under Clause 3.5.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all the Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.

### 3.6 Warranties

3.6.1 Some goods are sold by the Company expressly without warranty, as set out on the relevant Order Confirmation, in which case any warranty terms are not applicable.

3.6.2 Subject to 3.6.1 above, the Company warrants that Goods shall be free of material defects for the period of the manufacturer's warranty from the date of delivery ("**Goods Warranty Period**") and the Goods shall:

- (a) conform in all material respects with their as set out in the Functional Description; and
- (b) be free from material defects in design, material and workmanship.

3.6.3 The Customer acknowledges that the Company is not the manufacturer of the Goods and has to rely on the manufacturer to perform any returns or warranty obligations. To the extent permitted by applicable law, the Company provides to the Customer the manufacturer's warranties and remedies provided to the Company by the manufacturer or other third party vendor.

3.6.4 Subject to clauses 3.6.1 and 3.6.3, if the Customer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.6.2, the Customer's sole remedies are at the Company's option, the like for like repair or replacement of the defective Goods, or the refund of the price of the defective Goods in full provided that:

- (a) the Company is given a reasonable opportunity of examining the Goods; and
- (b) the Customer (if asked to do so by the Company) returns the Goods to the Company's place of business at the Customer's own cost and risk.

3.6.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out herein if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 3.6.4;
- (b) the defect arises because the Customer failed to follow the Company's or manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the Goods have been altered or repaired by anyone other than the Company without the written consent of the Company;
- (d) the defect arises due to the failure of any components that;
  - (i) are not original to the Goods; or
  - (ii) have not been supplied by the Company for use with the Goods; or
- (e) the Goods differ from the description of the Goods in the Functional Description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.6.6 Where clause 3.6.5 applies the Company may be able to provide support, repair and maintenance services in respect of the Goods but such services must be ordered by the Customer separately and will incur additional charges.

3.6.7 Except as provided in this clause 3.6, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.6.2.

3.6.8 This clause 3.6 shall apply to any repaired or replacement Goods supplied by the Company for the remaining portion of the Goods Warranty Period only.

### 3.7 Use of Software and functionality

The Customer acknowledges that the use of certain software and functionality forming part or available in connection with the Goods will be subject to the Customer taking, accepting and complying with separate licence terms and conditions from the Company or from third party providers.

## 4 Part 4: SaaS Service Terms

### 4.1 Application of these SaaS Terms

These SaaS Terms form part of the Agreement only if the Customer is purchasing SaaS Services under the Agreement.

## 4.2 Definitions

### 4.2.1 The following definitions apply in these SaaS Terms:

**Initial Subscription Term** means any initial term during which the SaaS Services are to be provided as set out in the Order and commencing on the Commencement Date;

**Renewal Subscription Term** means the renewal term (if any) identified in the Order during which the SaaS Services are to be provided;

**Solution** means the software application(s) to be provided as part of the SaaS Services;

**Subscription Term** means the period during which the SaaS Services are to be provided as initially set out in the Order commencing on the Commencement Date and as may be varied in accordance with the Agreement including any Initial Subscription Term and any subsequent Renewal Subscription Term;

**Trial Service** means the Services provided on a trial basis for the period of months indicated in the applicable Order.

**Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and

**Vulnerability** mean a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

## 4.3 SaaS Services

4.3.1 The Customer engages the Company and the Company agrees to provide the SaaS Services and Documentation in accordance with the terms of the Agreement for the Subscription Term.

4.3.2 The Company shall use all reasonable endeavours to meet any Commencement Date for the SaaS Services, but any such date shall be an estimate only and time shall not be of the essence for the provision of the SaaS Services.

4.3.3 The Company may agree to provide SaaS Services as a Trial Service.

- 4.3.4 Where a Trial Service is provided to the Customer, in relation to the SaaS Services this shall commence on the date specified in the Order and unless the Customer gives at least 7 days written notice that it does not wish to continue using the SaaS Services before expiry of the Trial Service, the Subscription Term shall continue in relation to the SaaS Services as set out in the Order.
- 4.4 Right of use to use the SaaS Services
- 4.4.1 Subject to the payment of the Fees, the terms of this Agreement (including any service-specific additional terms set out in an Order), the Customer is granted a non-exclusive, non-transferable licence during the Subscription Term to permit the Authorised Users to:
- (a) use the SaaS Services for the Subscription Term for the internal business operations of the Customer and/or End Customer identified in the Order only; and
  - (b) copy and use the Documentation as strictly necessary for its use by Authorised Users of the SaaS Services.
- 4.4.2 Where open source or third-party software is used as part of the SaaS Services, such software use by the Customer and/or End Customer will be subject to the terms of the open source or third party licences.
- 4.4.3 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Solution and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Solution; or
  - (b) access all or any part of the SaaS Services and Documentation in order to build a product or service which competes with the SaaS Services and/or the Documentation; or
  - (c) use the SaaS Services and/or Documentation to provide services to third parties (with the exception of any End Customer identified in the Order); or

- (d) subject to Clause 1.20.3, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS Services and/or Documentation available to any third party except the End Customers and Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the SaaS Services and/or Documentation, other than as provided under this Clause 4.4; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Company's network and information systems.

4.4.4 The Customer acknowledges that unless expressly stated to the contrary in an Order the SaaS Services do not include:

- (a) any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services);
- (b) dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data); or
- (c) legal, accounting or other professional or regulated services and that, except as expressly stated in the Agreement, no assurance is given that the SaaS Services will comply with or satisfy any legal or regulatory obligation of any person.

#### 4.5 Authorised Users

4.5.1 The Customer shall (and shall be responsible for any End Customer ensuring) that only Authorised Users use the SaaS Services and that such use is at all times in accordance with the Agreement.

4.5.2 The Customer shall keep (and where applicable ensure that the End Customer keeps) a list of all Authorised Users and shall promptly notify the Company if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by the Customer or End Customer entity such that they are no longer entitled to be Authorised Users. Where termination of such relationship is known in advance, the Customer shall provide such information as soon as reasonably possible prior to such termination of that relationship, together with the date such person shall cease to be an Authorised User.

4.5.3 The number of Authorised Users for each SaaS Service may not exceed any limit on the number of Authorised Users Accounts specified in the Agreement for the relevant SaaS Service at any time. The Customer is entitled to remove one individual as an



Authorised User and replace them with another individual in accordance with the terms of our Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time.

4.5.4 The Customer shall:

- (a) only provide Authorised Users with access to the Services via the access method provided by the Company and shall not provide access to (or permit access by) anyone other than an Authorised User;
- (b) ensure each Authorised User keeps secure their password for their use of the SaaS Services and immediately notify the Company if it becomes aware of any unauthorised use of any account or password or other breach of security;
- (c) (and shall ensure all Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of the Agreement.

4.5.5 The Customer shall comply (and shall ensure any End Customer and all Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to the SaaS Services, the Customer Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the SaaS Services, the Customer Data or the Documentation (or any part) to, or access or use the SaaS Services, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under any applicable laws without first obtaining such licence or other approval. Without prejudice to the Company's obligations under the DPA, the Customer shall be solely responsible for ensuring its access, importation and use of the SaaS Services, the Customer Data and Documentation complies with all export and other laws.

4.5.6 The Customer shall not (and shall ensure End Customers and Authorised Users do not) access, store, distribute or transmit any Viruses, or any material during the course of the use of the SaaS Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f) is otherwise illegal or causes damage or injury to any person or property.

#### 4.6 Monitoring & Security

4.6.1 The Company may monitor, collect, store and use information on the use and performance of the SaaS Services (including Customer Data) and or the Company's operations for the purposes to detect threats or errors in the SaaS Services and or the Company's operations and for the purposes of the further development and improvement of the Company's services, provided such activities comply with the Privacy Policy and DPA.

4.6.2 The Company may suspend access to SaaS Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the SaaS Services is in danger of being compromised by acts of a Customer, End Customer or Authorised Users. The Company shall where possible give the Customer 24 hours written notice, before suspending access to the SaaS Services, giving specific details of its reasons.

4.6.3 The Charges for the SaaS Services shall remain payable during any period of suspension notwithstanding that the Customer, End Customer or any or all Authorised Users may not have access to the SaaS Services.

#### 4.7 Support

The Company provides standard customer support services in accordance with the SLA. The Company may amend the SLA in its sole and absolute discretion from time to time.

#### 4.8 Changes to SaaS Services and SaaS Terms

4.8.1 The Customer acknowledges that the Company shall be entitled to modify or change the Functional Description, features and functionality of the SaaS Services. The Company shall use reasonable endeavours to ensure that any such modification or change does not materially adversely affect the use of the relevant SaaS Service(s) by the Company's customers generally.

4.8.2 The Company may at its absolute discretion make changes to these SaaS Terms from time to time. The Company shall use its reasonable endeavours to give the Customer at least 30 days' notice of any such changes.

#### 4.9 Subscription Term and termination

4.9.1 Without prejudice to any other termination rights of the parties, where Subscription Term is to be an Initial Subscription Term and any subsequent Renewal Subscription Terms, on expiry of the Initial Term and each subsequent Renewal Subscription Term, the Subscription Term will automatically renew for successive Renewal Subscription Terms unless either party gives the other notice to terminate at least 60 days prior to

the start of any Renewal Subscription Term in which case such notice shall be effective from the expiry of the then current Initial Term or Renewal Term as appropriate.

- 4.9.2 The Customer may terminate the Subscription Term without cause during the Initial Term or any current Renewal Subscription Term provided the Customer shall in such circumstances pay to the Company an amount equal to all the unpaid charges which would have been payable for the remainder of the Initial Term or then current Renewal Subscription Term.

#### 4.10 Customer Data

- 4.10.1 If the Company becomes aware of any allegation that any Customer Data may not comply with the AUP or any other part of the Agreement the Company shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the SaaS Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful the Company shall notify the Customer before taking such action.
- 4.10.2 Except as otherwise expressly agreed in the Agreement, the Company shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Subscription Term. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data. To the maximum extent permitted by applicable law, the Company shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 4.10.3 At the option of the Customer, following receipt of a request from the Customer the Company will delete or return all Customer Data stored in the Company's database in its then current format, free of charge, provided that such request is made within 30 days of termination. If the Customer requires any Customer Data to be returned in a different format the Company reserves the right to charge for this additional service on a time and materials basis.
- 4.11 Unless otherwise set out in the Order Form or subsequently agreed by the parties in writing, and without prejudice to the requirements of the DPA in respect of Personal Data, the Customer hereby authorises the Company to at any time after 30 days from termination securely dispose of Customer Data processed in relation to the SaaS Services provided that the Company may retain Customer Data in accordance with its then current retention and to extent that any applicable laws requires the Company to store such Customer Data. The Company shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with the Agreement.

#### 4.12 Company Warranties

##### 4.12.1 The Company warrants and represents that:

- (a) the SaaS Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice; and
- (b) the SaaS Services will operate to provide materially facilities and functions detailed in the Functional Description as varied from time to time.

##### 4.12.2 Subject to clause 4.12.3 if there is a breach of the warranty set out in clause 4.12.1, the Company shall use reasonable commercial endeavours, to correct any material defect or provide the Customer with an alternative means of accomplishing the desired performance, provided:

- (a) the Company is notified immediately in writing upon discovery of the defect; and
- (b) following the Company's examination of the SaaS Services, it is established that such a defect exists.

Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in Clause 4.12.1.

##### 4.12.3 The warranties set out in clause 4.12.1 shall not apply to the extent of any non-conformance which is caused by or relates to:

- (a) use of the SaaS Services contrary to the Company's instructions or other than for the purposes for which it is intended;
- (b) modifications made to the SaaS Services not carried out by the Company;
- (c) any third-party components not provided by the Company;
- (d) any act by any third party (including hacking or the introduction of any Virus);
- (e) any third party provided connectivity necessary for the provision or use of the SaaS Services; or
- (f) use or operation of the SaaS Services with third party programs software, applications or in an environment other than that set out in any implementation plan agreed between the parties in writing.

##### 4.12.4 The Company:

- (a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free;
    - (ii) that the SaaS Services, Documentation will meet the Customer's requirements; or
    - (iii) the SaaS Services will be free from Vulnerabilities or Viruses;
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the SaaS Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.12.5 All third party content or information provided by the Company via the SaaS Services, for example prices is provided "as is". The Company provides no warranties in relation to such content or information and shall have no liability whatsoever for use or reliance upon such content or information.
- 4.13 Customer Obligations
- 4.13.1 The Customer shall ensure that its (and any End Customer's) networks and systems comply with the relevant specifications provided by the Company from time to time and the Customer shall be solely responsible for:
- (a) procuring and maintaining their network connections and telecommunications links from their systems to the Company's systems; and
  - (b) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's or End Customer's network connections or telecommunications links or caused by the Internet.
- 4.14 Indemnities
- 4.14.1 The Customer shall defend, indemnify and hold harmless the Company, its employees, sub-contractors or agents from and against any claims, actions, proceedings, costs (including without limitation court costs and reasonable legal fees), losses, liabilities and expenses, arising out of or in connection with:
- (a) the Customer's and/or its End Customers and/or Authorised Users use of the SaaS Services and/or Documentation;
  - (b) any breach or alleged breach by the Customer, an End Customer or an Authorised User of any Company or third party IPR; or

- (c) any breach of the Agreement by the Customer and/or its End Customers and/or Authorised Users.

4.14.2 Subject to clause 4.14.4 the Company shall at its own expense, defend or at its own option settle any claim brought against the Customer that the Customer's or the Customer's End Customer's use of the SaaS Services and/or Documentation in accordance with the Agreement infringes the IPR of a third party and pay any final judgment entered against the Customer on such issue or any settlement thereof, provided that:

- (a) the Company is promptly notified of each such claim;
- (b) the Customer makes no comment or admission and takes no action that may adversely affect the Company's ability to defend or settle the claim;
- (c) the Company is given sole control of the defence and/or settlement; and
- (d) the Customer fully co-operates and provides all reasonable assistance to the Company in the defence or settlement.

4.14.3 If all or part of the SaaS Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company may at its own expense and sole discretion:

- (a) procure for the Customer the right to continue to use the SaaS Services or the affected part thereof;
- (b) replace the SaaS Service or affected part with another suitable non-infringing service or software;
- (c) modify the SaaS Services or affected part to make the same non-infringing; or
- (d) terminate the Agreement immediately by written notice and refund to the Customer on a pro-rata basis for any unused proportion of the charges paid in advance.

4.14.4 In no event shall the Company be liable to the Customer under clauses 4.14.2 and 4.14.3 or otherwise to the extent any alleged infringement arises from:

- (a) a modification of the SaaS Services and/or Documents by anyone other than the Company;
- (b) any Customer Data;
- (c) any open source software;

- (d) the Customer's or its End Customers' use of the SaaS Services and/or Documentation in a manner contrary to the instructions of the Company or in breach of this Agreement;
- (e) the Customer's or its End Customers' use of the SaaS Services and/or Documentation in combination with other products, services or software not provided by the Company or detailed in any implementation plan agreed with between the Customer and the Company in writing if such infringement would have been avoided in the absence of such combination;
- (f) the Customer's or its End Customers' use of the SaaS Services and Documentation after notice of the alleged or actual infringement from the Company or any appropriate authority.

4.14.5 Clauses 4.14.2 to 4.14.4 state sole and exclusive rights and remedies of the Customer and the Company's entire obligations and liability for any claims relating to any infringement or alleged infringement of IPR by the SaaS Services and Documentation.

#### 4.15 Contacts

4.15.1 The Customer shall provide a designated support contact who will be responsible for and have sufficient information to respond to support questions raised by the Company.

4.15.2 The Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding the SaaS Services.

## 5 Part 5: SIM Terms

### 5.1 Application of these SIM Terms

These SIM Terms form part of the Agreement only if the Customer is purchasing SIM Services under the Agreement.

### 5.2 Definitions

5.2.1 The following definitions apply in these SIM Terms.

**Code of Practice** means all guidelines governing use or provision of mobile telecommunications and data services that are issued by any generally recognised bodies or that are adopted by the Company, its SIM Card suppliers and/or any relevant Network Provider(s) from time to time, and all instructions regulations or guidance issued by the Regulatory Authorities, whether or not mandatory;

**Contract Term** has the meaning given in clause 5.9.1;

**End User** means the person who is the end user of each SIM Card;

**Fault** means any malfunction or other fault which prevents a SIM Card from operating properly;

**Helpdesk** means the remote support services to be provided by the Company as set out in these Sim Service Terms which can be accessed by the Customer on the phone number and/or email address provided to the Customer;

**Minimum SIM Contract Term** means the 'Length of Contract' detailed in the Order in relation to SIM Cards which in no circumstances shall be less than a period of twenty four (24) months starting on the date of activation of the relevant SIM Cards;

**Network Provider** means the network telecommunications operator that provides connectivity and airtime services to the SIM Card(s) via its agreement with the SIM Card suppliers of the Company;

**Regulatory Authorities** means the relevant regulatory bodies including those authorised to regulate electronic communications or telecommunications services, consumer protection or advertising in the relevant territory;

**Systems** means the hardware, software and public telecommunications systems run by the Company its SIM Card suppliers and the relevant Network Provider(s) or another network operator in order to provide the Services;

**Trial Service** means the Services provided on a trial basis for the period of months indicated in the Purchase Order. e.g. 2 months where written as '2+24';

### 5.3 Provision of the SIM Services and SIM Cards

5.3.1 The Company shall use its reasonable endeavours to provide the SIM Cards and SIM Services but its ability to do so may be affected by a number of factors which are beyond its control, including:

- (a) the capability of the devices with which the SIM Card(s) are used;
- (b) network over utilisation;
- (c) geographic or atmospheric conditions;
- (d) maintenance requirements; and
- (e) equipment failures.

5.3.2 Any coverage map issued by the Company, its suppliers or the Network Providers are reasonable estimates of the coverage available in an area at the time the map is produced and are in no way any guarantee of network availability or coverage.

5.3.3 The Company may at its sole discretion and at any time:



- (a) limit or cap the amount of Charges the Customer is able to incur during any given billing period; and/or;
  - (b) suspend the provision of Services to any SIM Card being used on any overseas networks.
- 5.3.4 If the Customer wishes to vary any limit or cap or enable the use of the SIM Card on any overseas networks the Customer should contact the Company to discuss the matter further. Subsequent changes are at the Company's discretion.
- 5.3.5 The Customer acknowledges that the Company may undertake and the Customer consents to the Company undertaking credit checks to determine the Customer's creditworthiness and that the Company may refuse to accept any Order from the Customer, or vary any existing Agreement terms and/or usage limits (including where appropriate) suspending the provision of Services to any one or more SIM Cards, where the Company in its discretion determines that the creditworthiness of the Customer warrants such action.
- 5.4 SIM Cards
  - 5.4.1 The Company will supply the SIM Cards set out in the Order.
  - 5.4.2 The Charges relate to the provision of the SIM Services and do not relate to the sale of the SIM Cards.
  - 5.4.3 The Company reserves the right to make changes to the SIM Cards:
    - (a) if necessary to comply with any applicable law, regulation or safety/security requirement; or
    - (b) which do not materially degrade the nature or quality of the SIM Card; andthe Company shall notify the Customer in the event any material change is made.
  - 5.4.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the SIMs or illustrations on the Company's website in any catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the SIMs described in them. They shall not form part of the Agreement or have any contractual force.
- 5.5 Delivery of the SIM Cards
  - 5.5.1 The Company will deliver the SIM Cards to the Delivery Location.
  - 5.5.2 Any dates quoted for delivery of the SIM Cards are approximate only, and time of delivery is not of the essence.

- 5.5.3 The Company shall have no liability for any failure to deliver the SIM Cards to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Company with adequate delivery instructions for the SIM Cards or any relevant instruction related to the supply of the SIM Cards.
- 5.5.4 If the Customer fails to accept or take delivery of the SIM Cards within 2 Business Days of the Company notifying the Customer that the SIM Cards are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Agreement in respect of the SIM Cards:
- (a) delivery of the SIM Cards shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the SIM Cards were ready;
  - (b) the Company shall store the SIM Cars until delivery takes place and charge the Customer for all related costs and expenses (including insurance); and
  - (c) The Customer shall be liable for all charges incurred from card activation, which may occur on or before the scheduled delivery date in accordance with clause 5.7.1 below.
- 5.6 Title and risk
- 5.6.1 The risk in the SIM Cards shall pass to the Customer on completion of delivery.
- 5.6.2 The Customer shall maintain the SIM Cards in satisfactory condition and notify the Company immediately if any SIM Card is damaged, destroyed, lost or stolen.
- 5.6.3 Notwithstanding the delivery and passing of risk in the SIM Cards, all SIM Cards supplied to the Customer shall at all times remain the property of the supplier or relevant Network Provider who supplied the SIM Cards to the Company.
- 5.7 SIM Card activation
- 5.7.1 The Customer shall indicate on the Order in which state the SIM Cards should be delivered, namely:
- (a) "active" where the SIM Cards shall be delivered active and the Charges payable from the date the Customer is notified the SIM Cards are active on the network; or
  - (b) "inactive" where the SIM Cards shall be delivered inactive and the Charges shall be payable when the Customer requests activation.
- 5.7.2 No SIM Cards will be activated without the Customer indicating which state the SIM Cards are required as set out in clause 5.7.1 above.

5.7.3 The Customer shall pay the Charges based on the tariff selected on activation of the SIM Cards, details of which will be on or will accompany the Order Form.

## 5.8 APNS

5.8.1 Unless the Customer expressly states in writing by email to the Company that they do not want the Public APN enabled, as a default the Public APN shall be enabled. If the Customer requires the Company to supply a Private APN, this must be expressly agreed and included in the relevant Order, together with the applicable charges.

5.8.2 The Customer acknowledges that the use of the Public APN by an End User may incur Charges. If the Customer requests the Public APN to be disabled during the Minimum SIM Contract Term, the Company shall use its reasonable endeavours to disable the Public APN typically within 48 hours of receiving a request but dependent on the Network Provider. The Customer acknowledges that it will be responsible for all Charges incurred up to the disabling of the Public APN taking effect in accordance with this clause.

5.8.3 If the Customer requests the Private APN is enabled, it is the Customer's responsibility to ensure their device is configured correctly so that it can use the APN.

## 5.9 Contract Term

5.9.1 The Contract Term for the provision of the SIM Cards and Services shall be for the Minimum SIM Contract Term and thereafter shall continue unless and until terminated by either party in accordance with the terms of the Agreement.

5.9.2 Where a Trial Service is provided to the Customer, in relation to the SIM Cards and SIM Services this shall commence on the date specified in the Order and unless the Customer gives at least 7 days written notice that it does not wish to continue using the SIM Cards and SIM Services before expiry of the Trial Service, the Contract Term shall continue in relation to the SIM Cards and SIM Services as set out in clause 5.9.1 above.

5.9.3 Any tariff change shall apply from the 1<sup>st</sup> of the month following the month in which the Customer receives the tariff addendum and/or customer solutions addendum. However, where SIM Cards are changed to an existing tariff an email notice suffices as confirmation. When a tariff change occurs the relevant SIM Cards shall be subject to a new Minimum SIM Contract Term from the date the tariff change becomes effective in accordance with this clause and thereafter shall continue unless and until terminated by either party under the Agreement.

5.9.4 Without prejudice to any other rights or remedies which the Company may have, the Company may terminate the provision of all or any of the SIM Cards and SIM Services with immediate effect by giving written notice to the Customer if:

- (a) the Customer breaches any of the obligations and warranties set out in clause 5.11; or
  - (b) the relevant Network Provider(s) upon which the SIM Services are dependent suspends or ceases to make the telecommunications network and infrastructure available; or
  - (c) the provision of any SIM Services requested by the Customer would require material modification to the Systems and/or substitution of any SIM Cards with SIM Cards of a different type.
- 5.9.5 Without prejudice to any other rights or remedies which the Company may have, the Company may, by giving thirty (30) calendar days' written notice to the Customer terminate the provision of the SIM Cards and/or Services (in whole or in part).
- 5.9.6 Upon termination or expiry of the Agreement, and without limiting any other right or remedy the Company may have against the Customer the Customer:
- (a) shall immediately cease using any of the relevant SIM Cards and SIM Services;
  - (b) as soon as reasonably practicable shall return all relevant SIM Cards to the Company at the Customer's cost and risk. Failure to return any SIM Card shall incur a charge for each SIM Card not returned.
- 5.9.7 Without prejudice to the other rights and remedies of the Company upon termination of the Agreement the following fees are payable:
- (a) if the Customer terminates all or part of the Agreement pursuant to clauses 1.4.7, or 1.8.1(a) only the Charges due up to and including the date of the termination of the Agreement are payable;
  - (b) if all or part of the Agreement is terminated for any other reason and the Minimum SIM Contract Term has not expired (and will not expire during the notice period) the following Charges are payable:
    - (i) the amount of unpaid line rental and other fixed Charges remaining in respect of each of the relevant SIM Cards terminated for the period from the date of termination and including the last day of the Minimum SIM Contract Term; and
    - (ii) all other outstanding Charges due up to and including the date of termination; and
    - (iii) if stated to be applicable in an Order, an administration fee for each SIM Card to be terminated in respect of the Company's administrative and other costs (including Network Provider

charges) of disconnecting the SIM Card from the SIM Services and the relevant telecommunications network;

- (c) If all or part of the Agreement is terminated for any other reason and the Minimum SIM Contract Term for the SIM Cards has expired (or will expire during the notice period) the following Charges are payable:
  - (i) the amount of unpaid line rental or other fixed Charges up to and including the date of termination;
  - (ii) all other outstanding Charges due up to and including the date of termination; and
  - (iii) if stated to be applicable in an Order, an administration fee for each SIM Card to be terminated in respect of the Company's administrative and other costs (including Network Provider charges) of disconnecting the SIM Card from the SIM Services and the relevant telecommunications network.

5.9.8 If the Customer elects to port or migrate their mobile phone number(s) the Company reserves the right to charge the Customer an administration fee per SIM Card (if stated to be applicable in an Order) in addition to any charges for termination charged by the relevant Network Provider that may be applicable and levied by that Network Provider against the Company.

5.9.9 If the SIM Services are suspended pursuant to clauses 1.7.1 or 1.8.4 and the Customer requests reconnection, the Company reserves the right to charge an administration fee as set out in the tariff relating to the applicable Order(s) per SIM Card reconnected in addition to all arrears in Charges due.

## 5.10 Company warranties

5.10.1 The Company warrants that:

- (a) the SIM Cards shall be free of material defects for a period of twelve (12) months from the date of delivery ("**SIM Warranty Period**"); and
- (b) that the SIM Services shall be performed with reasonable skill and care.

5.10.2 So far as it is able, the Company shall transfer to the Customer the benefits or all warranties and guarantees in relation to the SIM Cards that the Company receives from the relevant Network Providers.

5.10.3 If the Customer notifies the Company in writing within the SIM Warranty Period that some or all of the SIM Cards do not comply with the warranty set out in clause 5.10.1. above, the Company shall, at its option, repair or replace the defective SIM Cards provided that:

- (a) the Company is given a reasonable opportunity of examining the SIM Cards; and
- (b) the Customer returns the SIM Cards to the Company's place of business at the Customer's own cost.

5.10.4 The Company shall not be liable for the SIM Card's failure to comply with the warranty and shall have no obligation to repair or replace the SIM Card if:

- (a) the Customer makes any further use of such SIM Cards after giving a notice in accordance with clause 5.10.3;
- (b) the defect arises because the Customer failed to follow the Company's or manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the SIM Cards or (if there are none) good trade practice or the Customer's acts, omissions or misuse of the SIM Cards generally;
- (c) the Customer alters or repairs the SIM Cards without the written consent of the Company;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

If the Company is willing to repair or replace the SIM Cards in such circumstances the Company shall obtain the Customer's prior authorisation before incurring any additional costs for providing support and maintenance of the SIM Cards. If the Customer declines authorisation, the Company may leave the SIM Cards unrepaired in the damaged condition without any liability whatsoever.

5.10.5 Except as provided in this clause 5.10, the Company shall have no liability to the Customer in respect of the SIM Cards' failure to comply with the warranty set out in clause 5.10.1.

5.10.6 In the event that a SIM Card becomes faulty after the SIM Warranty Period and the Customer requests the Company to repair or replace such faulty SIM Card then the Company shall charge the appropriate replacement charges for repair or replacement. The return of faulty SIM Card(s) outside of the SIM Warranty Period or due to misuse by the Customer shall be at the Customer's sole expense.

5.10.7 The Company does not warrant that the SIM Services will be free of faults or interruptions, that the SIM Services will be free of errors, omissions or other issues or that the SIM Services will be timely or secure. The Customer acknowledges and agrees that matters may affect the SIM Services that the Company cannot reasonably control, including (without limitation) lack of network capacity, physical obstructions, atmospheric conditions and delays caused by the Company's suppliers or manufacturers.

## 5.11 Customer Obligations

5.11.1 The Customer shall use reasonable endeavours to ensure that it:

- (a) observes and complies with all applicable laws and Codes of Practice (including obligations applicable if any related service offered by the Customer means that either the Company and/or a Customer is a provider of electronic communications, telecommunications, value added or related services) and any instructions or conditions notified to the Customer by the Company, which in the Company's, its SIM Card supplier's or any Network Provider's reasonable opinion prevent:
  - (i) the transmission of illegal content; or
  - (ii) the Systems from being impaired or damaged;
- (b) does not act or omit to act in any way which will or may place the Company, its SIM Card suppliers and/or the relevant Network Provider(s) in breach of any provisions of the applicable law or a Code of Practice, any other licences, authorisations, applicable to any of them and co-operate fully with the Company to enable the Company, its SIM Card suppliers and/or the relevant Network Provider(s) (as the case may be) to comply with all of the same;
- (c) will not use or allow use of the SIM Services for any improper or unlawful purpose;
- (d) will not act or omit to act in any way which will or may injure or damage any persons or the property of any persons (whether or not employees agents or representatives of the Company, its SIM Card suppliers or any one or more Network Providers), the Systems or howsoever cause the quality of the Services to be impaired; and
- (e) complies with any instructions (including specifications and training) issued by the Company, its SIM Card suppliers and/or the relevant Network Provider(s) from time to time for the use and/or marketing of the SIM Services;
- (f) ensures that any information provided to the Company is accurate, complete and provided in a timely manner and shall inform the Company of any changes to such information;
- (g) only market to and solicit customers and End Customers using staff contracted to or employed directly by itself; and
- (h) identify, where relevant, the Company and (if requested by the Company, its SIM Card suppliers and/or the relevant Network Provider(s)) in proposals to its customers and End Customers which include the SIM Services.

- 5.11.2 The Customer shall ensure and shall use all reasonable endeavours to procure that each of its End Users is legally bound by all obligations set out in the Agreement which expressly or by implication relate to such End Users before the Customer or End Users receive any benefit of the SIM Services. Furthermore, a breach by the Customer or End Users of any of such terms of their agreement with such customer shall be deemed to be a breach by the Customer of the Agreement.
- 5.11.3 The Customer and not the Company shall provide support to its End Customers and End Users for the SIM Services, Systems and any other services and systems provided by the Customer.
- 5.11.4 The Customer shall not represent itself as an agent to the Company, a SIM Card supplier or any one or more Network Providers' behalf or commit the Company, a SIM Card supplier or any one or more Network Providers to any contracts. The Customer shall not without the Company's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the SIM Services which are inconsistent with those contained in the material supplied by the Company a SIM Card supplier or any one or more Network Providers or otherwise incur any liability on behalf of the Company a SIM Card supplier or any one or more Network Providers.
- 5.11.5 The Customer warrants to the Company that all information provided by or on its behalf in connection with the provision of the SIM Services is true, accurate and complete and can be relied upon in full by the Company and its agents, contractors and employees. The parties agree that subject to mandatory applicable law, the Company shall have no liability under or in connection with the Agreement to the extent that such liability arises directly or indirectly from:
- (a) the supply of untrue, inaccurate or incomplete information provided by the Customer or on its behalf and/or any breach by the Customer of its obligations and warranties in this clause;
  - (b) matters beyond the Company's reasonable control, including lack of network capacity, physical obstructions, atmospheric conditions and delays caused by the Company's suppliers;
  - (c) any defect, fault, breakdown, compatibility issues or other failure of any equipment, systems, services and/or software provided by the Customer or its agents, subcontractors or other third parties (including any Systems Integrator or other third party supplier to the Customer's customers or End Users and used with the SIM Services;
  - (d) any acts or omissions of the Customer or its agents subcontractors of other third parties in respect of the SIM Services (including any Systems Integrator of other third party supplier.



5.11.6 The Customer shall during the Term:

- (a) make available appropriate personnel to liaise with the Company to enable the Company to perform the SIM Services in accordance with the Agreement;
- (b) promptly inform the Company of any defects in the Company's performance of the SIM Services after such defects come to the attention of the Customer;
- (c) comply and ensure that its customers and End Users comply with any conditions notified by Network Providers and/or the SIM Card suppliers regarding the use of the SIM Cards;
- (d) immediately inform the Company if:
  - (i) the Customer's name, address, bank account or credit card details change; or
  - (ii) any of the Customer's SIM Card(s) are lost or stolen by calling the Helpdesk and thereafter write or fax to confirm the details.

5.11.7 The Customer shall not, and shall ensure that its customers and End Users shall not throughout the Contract Term and after termination of the Agreement:

- (a) use the SIM Cards (or allow it to be used) for any illegal purpose (in such circumstances the Company may report the incidents to the police or any other relevant official organisation); or
- (b) use any equipment that has not been approved for use in connection with the SIM Services by the Company, its SIM Card suppliers and the relevant Network Provider(s) and if the Customer is not sure whether the Customer's equipment is so approved, to notify the Company immediately. The Company reserves the right, at its sole and absolute discretion, to require the Customer to satisfy the Company that any equipment to be used in connection with the SIM Services is fit for purpose and suitable and the Customer undertakes to the Company to comply with the Company's testing and other requirements in respect of the same.

5.11.8 If the Customer acts as a Systems Integrator or other third party supplier the Customer shall keep detailed up-to-date records of all acts and things done by the Customer in relation to the provision of the SIM Services to the End Customer and End Users during the Contract Term and for a period of six (6) years thereafter, and at the Company's request, shall make such records available for inspection and/or provide copies to the Company.

5.11.9 The Customer acknowledges that if it requests a bar to be applied to any SIM Card, for any reason, that such bar will become effective within twenty four (24) hours of the

Company notifying the relevant Network Provider. The Company shall notify the relevant Network Provider.

5.11.10 The Customer acknowledges that it will be responsible for all Charges incurred up to a bar taking effect in accordance with the timeframe set out in this clause 5.11.10.

## 5.12 Disclaimer

5.12.1 To the extent permitted by applicable law, the Company excludes all warranties (including any warranties implied by law) of the Company, its SIM Card suppliers and the relevant Network Provider(s) and any liability of the Company, SIM Card suppliers and the relevant Network Provider(s) for any damages, whether direct, indirect, or consequential, arising from the sale or use of the SIM Services, Systems and any other services and systems provided by the Customer and End Users.

5.12.2 To the extent permitted by law, the Company shall not be liable for services and equipment provided by the Customer or any third party which constitute:

- (a) a component of the SIM Services;
- (b) a component of other systems, equipment or services provided by the Customer and or any third party to the Customer and/or any End Users.

5.12.3 In no circumstances will the Company's aggregate liability for any damages, whether direct, indirect, or consequential, arising from the sale or use of the SIM Services, Systems and any other services and systems provided by the Customer and End Users exceed 50,000the value of the Charges paid and payable for the SIM Services, SIM Cards or Systems in relation to which the claim arises up to the date of the cause of action giving rise to the claim.

## 5.13 Intellectual Property Rights

5.13.1 All IPRs in the Services including without limitation all right, title and interest in and to all documents, data, specifications or other items relating to the Services, shall vest in and shall remain the exclusive property of the Company its SIM Card Suppliers and the relevant Network Provider(s) or its third party licensors, as applicable.

5.13.2 The Customer shall not, and shall use all reasonable endeavours to procure that End User shall not, claim ownership of any IPRs in relation to or created pursuant to the SIM Cards or the Services and shall not take any action which might infringe any IPRs or other form of protection for any invention, discovery, improvement, design, mark or logo in relation to the SIM Cards or the Services and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities proceedings damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer and/or End Users.

- 5.13.3 Any data, documents, IPRs or other information belonging to the Company its SIM Card suppliers or a Network Provider which is supplied or otherwise furnished to the Customer in connection with the performance of the Agreement or otherwise shall remain the sole property of the Company its Sim Card suppliers or the relevant Network Operator to whom they belong (as the case may be).
- 5.13.4 The Customer acknowledges that it shall have no express or implied right to use, modify, adapt or otherwise exploit the Company, its SIM Card suppliers or the Network Providers or any other third party's IPRs, except for the right to use such IPRs for the exclusive purpose of using the Services under the Agreement.
- 5.13.5 The Customer shall indemnify and hold the Company harmless against any claims that the use of the Services in combination with services, software or equipment not supplied by the Company infringes any other third party's IPRs.
- 5.13.6 The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions, claims or demands in relation to any IPRs or other form of protection for any invention, discovery, improvement, design, mark or logo in relation to the SIM Cards and/or the Services and the Customer shall provide (and shall use all reasonable endeavours to procure that the Customer's customers and End Users shall provide) the Company with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the SIM Cards and/or the Services and if so requested by the Company in relation to any claim or action brought against the Customer, the Customer shall authorise the conduct of the same and all negotiations for the settlement of the same by the Company, its SIM Card suppliers or the relevant Network Provider(s) if directed by the Company in its sole and absolute discretion.

## 5.14 Roaming Charges

- 5.14.1 The Customer acknowledges that in relation to international roaming Charges:
  - (a) the Network Partners vary their roaming fees dependent upon:
    - (i) the location of the SIM Cards;
    - (ii) whether roaming is on preferred or non-preferred networks; and

- (b) it is the Customer's responsibility to ensure that the Customer, End Customer and End Users each familiarise themselves with the billing increments and data usage Charges for roaming SIM Cards.

#### 5.15 Updates, Suspension and Deactivation of SIM Cards

- 5.15.1 The Company and each Network Provider reserve the right to update SIM Cards over the air. The Company shall provide the Customer with reasonable prior notice of any planned update (except in cases where regulations or urgency would not allow this.) Under some national laws, updates require the consent of the owner of the equipment containing/user of a SIM Card. The Customer hereby expressly consents to any updates and the Customer shall make and procure to make such consent binding on any owner of such equipment/SIM Card user through a relevant licensing agreement or by other equivalent means. Where such consent is not obtained, the Company its SIM Card suppliers and/or any relevant Network Provider shall have the right to suspend transmission to and from the relevant SIM Cards.
- 5.15.2 The Company and each relevant Network Provider retain the right at all times to suspend or deactivate any non-upgraded SIM Cards and neither the Company nor any Network Provider accepts and liability for any consequences of such suspension.
- 5.15.3 The Company may suspend the SIM Services, or any SIM Card, if any one or more of the following occur:
  - (a) the telecommunications network and other infrastructure in place supporting the SIM Services fails or if modification or maintenance work is being carried out in respect of the same, or such telecommunications network is unavailable for any reason;
  - (b) the Company does not receive full payment of any Charges due in accordance with the payment terms;
  - (c) the Company believes or has reasonable grounds to suspect that the Customer's equipment or SIM Card(s) are being used fraudulently or illegally or if they have been lost or stolen (in which case Charges remain payable until the Company is notified of such fraudulent or illegal use;
  - (d) the Customer is otherwise in material breach of the terms of the Agreement;
  - (e) the Company reasonably anticipates that a material breach is about to occur;
  - (f) the Customer breaches any of its warranties or obligations in clause 5.11 or any other of its material obligations;

- (g) at its discretion in relation to SIM Card(s) if it suspects that they have been tampered with, in any way which could render invoicing information inaccurate.

#### 5.16 Fault SIM Cards – Helpdesk

- 5.16.1 The Company shall provide first line support to the Customer through the Helpdesk facility.
- 5.16.2 The Helpdesk shall be staffed by appropriately qualified personnel between the hours of 09:00 and 17:30 GMT/BST on Business Days.
- 5.16.3 Upon receipt of a Customer report that a SIM Card has developed a Fault, the Helpdesk shall, so far as they are able, take such steps to resolve the relevant Fault, including, remotely resetting the SIM Card.
- 5.16.4 Should the Helpdesk action undertaken in accordance with clause 5.16.3 fail to remedy the Fault, and the Fault occurs during the SIM Warranty Period the Company shall replace the faulty SIM Card free of charge.
- 5.16.5 Should the Helpdesk action undertaken in accordance with clause 5.16.3 fail to remedy the Fault, and the Fault occurs after the expiry of the SIM Warranty Period the Company reserves the right to charge a replacement fee in relation to the provision of the replacement SIM Card.

#### 5.17 Reporting and use of SIM card supplier platform

- 5.17.1 If the Customer has a specific query relating to data usage of a SIM Card provided and the Company deems the query to be reasonable, the Customer is entitled to request a detailed report showing the itemized data usage of the SIM Card. The Company reserves the right to charge a fee for the provision of any such report. In the event of any dispute regarding data usage of a SIM Card the Company and (if applicable) the relevant Network Provider's usage data shall be binding on the Customer and the Company.
- 5.17.2 In addition to the Services, the Company grants to the Customer, the Customer's End Customers and End Users a non-exclusive, non-transferable, revocable licence to use the SIM Card supplier's platform. The Customer acknowledges and will ensure that its End Customers and End Users are aware that all information on the platform is for guidance and information purposes only and cannot be relied on by the Customer for any invoicing or otherwise.
- 5.17.3 The Company makes no representations or warranties as to the availability or accuracy of the SIM supplier's platform or information contained therein. The Company reserves the right to restrict or remove access by the Customer, the Customer's End Customers and End Users to the platform, or to change the look, feel, availability or content of the platform at any time.

5.18 Mobile number

5.18.1 The Customer can apply to port or migrate the mobile phone number relating to a SIM Card to another Network Provider. In such circumstances charges shall apply in accordance with the relevant Network Provider's tariff applicable at the time.

5.18.2 The Company reserves the right to change the Customer's mobile number from time to time. The Company shall write to the Customer to let the Customer know if this is the case.

5.19 Indemnity

5.19.1 The Customer shall indemnify and hold the Company, its SIM Card suppliers and each Network Provider harmless from and against all losses, damages, costs, expenses, claims, proceedings and liabilities (including reasonable legal costs) ("**Relevant Losses**") incurred by the Company, its SIM Card Suppliers and each Network Provider or any of either of their respective group companies arising out of or in connection with any claim by a third party in relation to the SIM Cards or SIM Services to the extent that such Relevant Losses have not been caused by any act, omission (negligent, reckless or otherwise) of the Company, its SIM Card Suppliers or a Network Provider or any of either of their respective group companies.

5.19.2 The Customer shall indemnify and hold the Company harmless against Relevant Losses arising out of any claims that the use of the SIM Services in combination with services, software or equipment not supplied by the Company infringes any other third party's IPRs.