

Sterling Business Communications Ltd
Terms and Conditions Jan2019

Please read this Terms and Conditions in conjunction with the Company's Privacy Notice which can be found on the Company Website (as defined below)

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions (**Terms and Conditions**) the following words shall have the following meanings:

ADR Notice	has the meaning given in Clause 26.2
Agreement	the agreement between the Customer and the Company for the purchase and supply of the Services and/or Company Equipment comprising the terms of this Terms and Conditions, the relevant Order Form and the applicable Service Schedule and formed in accordance with clause 3.4;
Authorised Provider	the authorised third party telecommunications provider or other network service provider responsible for providing Services and/or Equipment (or an element thereof) as stipulated in the Order Form;
Balance of Contract	the Charges accrued up to and including the expiry of the Minimum Term and/or any Subsequent Term pursuant to the Agreement;
Call-Out Charge	has the meaning given in Clause 11.10;
Cease Charges	the charges payable by the Customer to the Company on cessation of the Services and/or supply of Company Equipment as set out in Schedule 3 of this Terms and Conditions (which may be increased from time to time);
Charges	the charges payable by the Customer for the Services and/or Company Equipment (including where applicable line rental, equipment rental, any other rental charges and Transitional Service Charges) under the Agreement;
Commencement Date	the date on which the Company accepts the Customer's Offer pursuant to clause 3.3, at which point the Agreement between the Customer and the Company comes into existence;
Commissioner, controller, data subject, personal data, personal data breach, processor and processing	the meaning given to them under Data Protection Legislation;

Company	the relevant trading entity that is a member of the Sterling Group, details of which are set out in the Order Form/service agreement;
Company Website	the following Company Website (as may be amended from time to time): www.sterlingcommunications.uk <hr/>
Company Equipment	any Equipment and/or Software owned by the Company or its licensors supplied to the Customer by or on behalf of the Company to enable the Customer to use the Services (including, without limitation, Hire Equipment) as specified in the Order Form or such alternative equipment provided in accordance with clause 8.11 or otherwise agreed between the parties in writing. Any Equipment that the Customer has purchased from the Company shall be considered Company Equipment until the date title has passed to the Customer pursuant clause 21.2.1.
Company Software	has the meaning given to that term in the definition of Software.
Customer Computer System	databases, software, cabling, systems, computer hardware, networks and any other components to the Customer's computer system owned or used by the Customer (excluding those elements provided to the Customer by the Company as part of the Services);
Confidential Information	any and all information of a confidential nature, whether disclosed (in written or oral or machine-readable form or otherwise) including without limitation information relating to the parties' services, equipment, operations, know-how, trade secrets, plans, customer or product information, developments, operations (financial, commercial, technical, tactical, strategic, marketing or otherwise), personnel information, any information agreed to be or marked as confidential and any other information the parties know, or could be reasonably expected to know, is confidential and any other such information related to or concerning either parties business;
Customer	the individual, company, entity, organisation, or business that purchases the Services from the Company;
Customer Equipment	any Equipment not supplied by the Company or its Authorised Provider that is used by the Customer to access the Services. Any Equipment the Customer purchases from the Company shall also be considered to be Customer Equipment once title has passed to the Customer pursuant to clause 21.2.1.
Customer Materials	any Customer materials or information and any data provided by the Customer to the Company in the course of or in connection with the provision of the Services and/or Company Equipment;
Customer Portal	The Customer portal made available by the Company to all Customers to view usage, invoices and Charges;

Customer Services Department	the Company's designated customer services department, contact details of which can be found on the Company Website;
Data Protection Legislation	<ul style="list-style-type: none"> (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; (ii) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Company is subject, which relates to the protection of Personal Data;
Defect	has the meaning given to it under clause 9.4;
Delivery	the time at which Company Equipment is deemed to be delivered to the Customer under clause 10.3, and "Delivered" shall be construed accordingly;
Delivery Location	has the meaning given to it under clause 10.1;
Dispute	has the meaning given in clause 26.2;
Documentation	any documents made available to the Customer by the Company or its Authorised Provider which sets out a description of the Services, Software and/or Equipment or user instructions for the Services, Software and/or Equipment;
Equipment	any equipment, hardware or other tangible material used or supplied as part of the Services and any manuals and other documentation relating to such equipment. Equipment does not include consumables, such as leads, or batteries.
EU GDPR	the General Data Protection Regulation ((EU) 2016/679);
Force Majeure Event	for the purposes of the Agreement, means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), interruption or failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
Hire Equipment	the Company Equipment (including but not limited to any part or parts of them such as, leads, wires, cases and spare batteries) hired by the Customer from the Company or its Authorised Providers as described in the Order Form.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow), and all other intellectual property rights, in each

	case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Terms and Conditions	these terms and conditions made available to the Customer at the Company's Website at www.Sterlingcommunications.uk
Microenterprise or Small Enterprise Customer	a Customer for which no more than 10 (ten) individuals work (whether as employees or volunteers or otherwise), but which is not a communications provider (or, to the extent different, the meaning given to it under OFCOM's General Conditions of Entitlement (as amended from time to time));
Minimum Term	means: (a) 36 thirty-six months from the Service Go-live Date; or (b) such other period starting from the Service Go-live Date expressly agreed between the Parties and specified in the service agreement;
Network	the telecommunications network operated by the Company or a Network Operator and used by the Company to perform the Services;
Network Operator	a network operator who operates a Network to which a SIM or line is connected in accordance with an agreement between the Network Operator and the Company for the purpose of enabling the Company to provide the Services;
Not-For-Profit Customer	a Customer for which no more than 10 (ten) individuals work (whether as employees or otherwise but excluding volunteers) and which: (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes); (or, the extent different, the meaning given to it under the OFCOM's General Conditions of Entitlement (as amended from time to time));
Occurrences	has the meaning given to it under clause 7.9;
OFCOM	the Office of Communications or other replacement regulatory authority;
Offer	the Customer's offer to purchase Services and/or Company Equipment from the Company pursuant to clause 3.2;
Openreach	BT Openreach (a BT Group business)
Order Form/Service Agreement	a document prepared and issued by the Company (by electronic means or otherwise) setting out, amongst other

	things, a description of the Services and/or Company Equipment to be provided by the Company to the Customer in accordance with the Agreement;
Privacy Notice	the Company's privacy notice which can be found on the Company Website here: www.sterlingcommunications.uk
Retention Fee	has the meaning given in clause 15.2.1;
Sterling Business Communications	Sterling Business Communications Ltd Company number: 12887690 Registered Office: The Stables, Goblands Farm Business Centre, Cemetery Lane, Hadlow, Kent, United Kingdom, TN11 0LT
Service Assured Products	has the meaning given in Schedule 2 (Service Assured Products).
Service Go-live Date	the date on which the Company shall start to provide the Services as notified to the Customer by the Company or as otherwise agreed between the Parties in writing;
Service Schedule	the document issued by the Company to the Customer setting out the applicable Service specific terms relevant to the Service specified in an Order Form/Service Agreement;
Services	all services (or an element thereof) supplied by the Company that are set out in the service agreement and that the Company agrees to supply and the Customer agrees to purchase pursuant to the Agreement including without limitation and to the extent applicable.
Site	the site(s) which the Company needs to access to deliver or install Equipment or to provide the Services and/or the location the Services are to be provided as set out in the service agreement or as otherwise agreed between the parties in writing from time to time;
Software	The online or installed software applications provided by the Company (or its Authorised Providers) as part of the provision of Services and/or Company Equipment to the Customer whether owned by a third party (Third Party Software) or by the Company (Company Software);
Subsequent Term	except where the Customer is a Microenterprise or Small Enterprise Customer or Not-for-Profit Customer, a period of 12 (twelve) months starting from (i) the final day of the Minimum Term in relation to the Agreement and/or (ii) every later 12 (twelve) month anniversary after the start date in (i), unless the Agreement is terminated earlier in accordance with this Agreement (or such other period set out in the Order Form). For Microenterprise or Small Enterprise Customers or Not-for-Profit Customers, the

	subsequent term shall be the period expressly agreed between the Parties in writing;
Support Request	a request made by the Customer in accordance with the Agreement for support in relation to the Service or Equipment;
System	the Network that the Company uses to provide the Services;
Term	has the meaning given to it under clause 4.1;
Third Party Software	has the meaning given to that term in the definition of Software;
Transitional Service Charges	Charges payable for Transitional Services and calculated pursuant to clause 15.2.2 or, where the Customer is a Microenterprise or Small Enterprise Customer or Not-for-Profit Customer, clause 15.3;
UK GDPR	has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
Virus	<p>anything (including any software, code, file or programme) which may:</p> <ul style="list-style-type: none"> a. 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; b. 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 c. adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
Vulnerability	any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly;
Working Day	09.00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Company;
Working Hours	09.00 to 17:00 on Working Days.

1.2. **CONSTRUCTION.** The following rules apply to the Agreement:

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. a reference to writing or written includes e-mails but not faxes.
- 1.2.3. a reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.
- 1.2.4. headings in the Agreement shall not affect interpretation.
- 1.2.5. the Schedules form part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to the Agreement includes the Schedules.
- 1.2.6. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. STRUCTURE OF THE AGREEMENT

2.1. The Agreement incorporates the following documents, which will take the following order of precedence and by using our Service/Products you are agreeing to our Terms and Conditions.

- 2.1.1. Service Agreement, or any instruction to proceed with a quotation.
- 2.1.2. the applicable Service Schedule;
- 2.1.3. this Terms and Conditions (and its Schedules); and
- 2.1.4. any other document explicitly referred to in the Agreement.

2.2. In the event of conflict between the provisions of the documents making up the Agreement, the order of precedence shall be as set out in clause 2.1 (in order of decreasing precedence) unless explicitly stated otherwise.

3. ORDERS

3.1. These Terms and conditions govern the overall relationship of the parties in relation to the Services and/or Equipment provided by the Company to the Customer.

3.2. Receipt by the Company of the Order, duly signed by or on behalf of the Customer, constitutes an offer by the Customer to purchase the Services and/or Equipment from the Company in accordance with These Terms and conditions (**Offer**).

3.3. No Offer shall be deemed accepted by the Company until the earlier of:

- 3.3.1. a written acceptance is issued by the Company, or
- 3.3.2. the Company taking any steps which are consistent with fulfilling the Customer's duly executed

Order Form.

3.4. Once the Customer's Offer has been accepted by the Company pursuant to clause 3.3, an agreement between the Customer and the Company for the purchase and supply of the Services and/or Equipment subject to the Order Form, These Terms and conditions and the applicable Service Schedule will

come into effect (**Agreement**) and the Customer shall not withdraw the Offer except as otherwise permitted under the Agreement.

- 3.5. The Customer is responsible for ensuring that all information in the service agreement is complete and accurate.
- 3.6. For the avoidance of doubt and subject to clause 6.6, the Company shall be under no obligation to provide Services as of the Service Go-live Date until acceptance of the relevant Offer by the Company pursuant to clause 3.3.
- 3.7. The Company may accept or reject Offers at its sole discretion.
- 3.8. Within 10 (ten) Working Days of receipt of an Offer by the Customer to purchase Equipment and/or Services from the Company (or such other time as agreed with the Customer) the Company or its Authorised Provider shall carry out a feasibility check and audit of the Customer Computer System.
- 3.9. If the Customer's Computer System passes the feasibility check, the Customer's Offer shall only be deemed accepted if the Company takes any of the steps set out in clause 3.3.
- 3.10. Any quotation for Services and/or Company Equipment given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 (thirty) days from the date of issue.
- 3.11. The Agreement governs the provision of Services and/or Company Equipment by the Company to the Customer 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.
- 3.12. Any samples drawings, descriptive matter or advertising produced by the Company are produced for the sole purpose of giving an approximate idea of the Equipment and/or Services referred to in them. They shall not form part of the Agreement between the Parties nor have any contractual force.

4. MINIMUM TERM, SUBSEQUENT TERM, AND BALANCE OF CONTRACT

- 4.1. The Agreement shall commence and be binding on the Parties as of the Commencement Date and shall continue for the Minimum Term and any Subsequent Term(s), unless terminated earlier in accordance with its terms (**Term**). By using our services you are agreeing to our Terms and Conditions.
- 4.2. The supply of Services shall commence on the Service Go-live Date and will continue for the Minimum Term and any applicable Subsequent Term.
- 4.3. The Service Go-live Date, Minimum Term and Subsequent Term (where applicable) may vary for each individual Service specified under an service agreement.
- 4.4. Unless the Customer is a Microenterprise or Small Enterprise Customers or Not-For-Profit Customer, upon the expiry of the Minimum Term or each Subsequent Term (as the case may be), the Agreement will automatically renew for a new Subsequent Term until either party terminates in accordance with the terms of the Agreement.
- 4.5. Except as otherwise expressly provided under the Agreement, if the Customer terminates the Agreement before the expiry of the Minimum Term or any Subsequent Term the Customer shall pay the Balance of Contract pursuant to clause 16.1.2.

5. THE SERVICES

- 5.1. The Customer warrants and represents it has the full capacity and authority to enter into and perform the Agreement and that the Order is executed by a duly authorised representative of the Customer.
- 5.2. In consideration of the Customer paying the Charges and complying with its obligations under the Agreement, the Company shall supply the Services and/or Company Equipment in accordance with the terms of the Agreement.
- 5.3. The Customer acknowledges that the provision of certain Services shall be subject to the completion of a satisfactory Site survey. The Customer shall grant the Company, its employees, agents, consultants, subcontractors, Authorised Provider or other third party service providers (as the case may be) access

to the Site as required to complete such Site survey or otherwise comply with its obligations under the Agreement.

- 5.4. If the Customer wishes to port a Service (or any part thereof) which the Customer wishes to use in connection with other Services provided by the Company, the Customer agrees and understands there may be downtime associated with this process. Although the Company will not be responsible for any loss or consequence of delay suffered by the Customer arising out of any such downtime in the Services, it will use all reasonable endeavours within its control to prevent or reduce such downtime.
- 5.5. The Company reserves the right to reject a porting request in the following circumstances:
 - 5.5.1. if the Company reasonably believes such porting request is fraudulent; or
 - 5.5.2. where a fellow telecommunications provider submits a porting request to the Company on behalf of the Customer and that Customer has authorised the Company to reject such porting request on the basis it no longer wishes to switch providers; or
 - 5.5.3. under the authority or direction of OFCOM.
- 5.6. The Customer may be allocated a username and password in order to access the Services and/or use Company Equipment (**Customer Account**). The Customer shall keep all usernames and passwords confidential and shall take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. The Customer will:
 - 5.6.1. inform the Company if the Customer becomes aware of or suspects any unauthorised use of the Customer's username and password and agrees to take all necessary steps (or such steps as may be requested by the Company) to prevent such use or unauthorised access to the Customer Account(s);
 - 5.6.2. ensure any usernames and passwords provided or enabled by the Company are used strictly in accordance with any instructions issued by the Company; and
 - 5.6.3. indemnify the Company for any loss, costs, expenses or damages that it may suffer as a result of a breach of this Clause 5.6.
- 5.7. To ensure that the Services remain secure, the Customer must not change or attempt to change any usernames to Customer Account(s) without the Company's prior written permission.
- 5.8. For the avoidance of doubt, the Customer's obligations under clauses 5.6 and 5.7 above apply to any username and password provided or enabled by the Company to allow the Customer access to the Customer Portal.
- 5.9. The Customer acknowledges that supply of the Services and/or Equipment may require some minor modifications to the Customer Computer System. It is the Customer's responsibility to ensure that such modifications do not invalidate the terms of any warranty that the Customer may have concerning the Customer Computer System. The Company will not be liable for any claim that the Customer's warranty has been invalidated (if applicable) as a result of work or modifications carried out by the Customer, the Company, or either Parties' employees, agents, consultants, subcontractors or other third party service providers in order to make the Customer Computer System operate with the Services and Equipment.
- 5.10. It is the Customer's responsibility to ensure the compatibility of the Services and Company Equipment with Customer Equipment and Customer Computer System.
- 5.11. The Customer recognises that the Services and/or Equipment may from time to time be adversely affected by failure of a server or other external causes beyond the Company's reasonable control and may require urgent maintenance without notice. The Customer further acknowledges that the Company will have no liability for such failure of the Services and/or Equipment unless and to the extent caused by the Company's negligence or fraudulent misrepresentation.
- 5.12. The Customer acknowledges that the Services and Equipment may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via a third-party Website 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 websites made available via the Services and/or Equipment.

- 5.13. The Company's employees, agents, Authorised Provider's or sub-contractors are not authorised to make any representations concerning the Services or Company Equipment unless confirmed by the Company in writing.
- 5.14. Any advice or recommendation given by the Company or its employees, agents, Authorised Providers or sub-contractors to the Customer or its employees or agents as to the Services or Company Equipment which is not confirmed in writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed in writing.
- 5.15. Some technical limitations with the Services may not become apparent until after the Equipment has been connected to the Network or installed and the Services provided to the Customer for some time.

6. THE COMPANY'S GENERAL OBLIGATIONS

- 6.1. The Company shall provide the Services and Company Equipment with the reasonable care and skill of a competent telecommunications operator.
- 6.2. The Company shall supply the Services to the Customer from the Service Go-live Date and thereafter for the duration of the Minimum Term and any applicable Subsequent Term unless the Agreement is terminated earlier pursuant to the terms of the Agreement.
- 6.3. The provision of the Services and/or Company Equipment is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Customer shall obtain and maintain any such licences, infrastructure, consents or facility that is necessary or desirable for the Company to provide the Services or install Company Equipment at the Site.
- 6.4. Although the Services will be provided within the Company's Network Operator's Network area, the Customer acknowledges that the quality or coverage may be adversely affected at times for reasons beyond the Company's reasonable control.
- 6.5. The Customer acknowledges that:
 - 6.5.1. the Company cannot guarantee that the Services will be available without interruption or will be free from error;
 - 6.5.2. it is technically impossible to provide an incident free Service and the Company does not undertake to do so;
 - 6.5.3. the Services and Company Equipment have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the Services and Company Equipment meet their requirements;
 - 6.5.4. the operability, quality and availability of the Services and Equipment may sometimes be affected by factors outside the Company's, Openreach's or other Network Operator's control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks or other events; and
 - 6.5.5. the existence of any minor errors in the Services or Company Equipment shall not constitute a breach of the Agreement

and the Company shall have no liability to the Customer in connection with any such adverse effect on the performance of the Services pursuant to this clause 6.5.

- 6.6. The Company shall use reasonable endeavours to deliver Services by any estimated Service Go-live Date and/or Company Equipment by the date or dates set out in the Order Form, but any such dates are estimates only and the Company shall not be liable for failure to meet them or for any delay caused by circumstances beyond the Company's reasonable control including but not limited to delays in obtaining consent to carry out work at the Site.

- 6.7. Time shall not be of the essence of the Agreement.
- 6.8. Unless expressly stated otherwise in the Service Schedule, the Company shall not, and shall not be under any obligation (express or implied) to, monitor the Customer's usage and/or patterns of usage.
- 6.9. The manner in which the Company discharges its obligations under the Agreement is at the sole discretion of the Company.
- 6.10. The Agreement shall not prevent the Company from entering into the same or similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are the same or similar to those provided under the Agreement.

7. THE CUSTOMER'S OBLIGATIONS

- 7.1. The Customer warrants that it is entering the Agreement for the purpose of its trade, business craft or possession and is not a consumer (within the definition of consumer protection legislation from time to time in force).
- 7.2. The Customer may only use the Services and/or Company Equipment:
 - 7.2.1. in accordance with the terms of the Agreement; and
 - 7.2.2. for its own internal use. The Customer may not resell or commercially exploit any of the Services and/or Company Equipment or otherwise act as a distributor in respect of the Services and/or Company Equipment without the prior written consent of the Company.
- 7.3. The Customer shall comply with all security standards applicable to the Services and as notified to the Customer by the Company from time to time. The Customer shall not utilise and shall ensure that no other person uses the Services or Company Equipment:
 - 7.3.1. for storing, reproducing, transmitting, communicating, or receiving any material in breach of any law, regulation or code of practice; or
 - 7.3.2. in a way that contravenes any licence, code of practice, instructions or guidelines by a relevant regulatory authority (including without limitation OFCOM); or
 - 7.3.3. fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement, in bad faith or, to the knowledge of the Customer, has any unlawful, fraudulent or bad faith purpose or effect; or
 - 7.3.4. to make defamatory, offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or
 - 7.3.5. to cause annoyance, inconvenience, or needless anxiety to any person; or
 - 7.3.6. contrary to instructions that the Company may give to the Customer from time to time; or
 - 7.3.7. to copy, store, modify, publish, or distribute Services or any part thereof (including without limitation ringtones), except where the Company gives the Customer prior permission in writing; or
 - 7.3.8. to download, send or upload content of an excessive size, quantity or frequency. The Company will contact the Customer if the Customers use is excessive; or
 - 7.3.9. in violation of any applicable local, national, or international law or regulation or breaches any terms of any licence granted to the Customer; or
 - 7.3.10. in a manner that does or is likely to adversely interfere with the provision of the Services; or
 - 7.3.11. in a manner which infringes the rights of any person, including Intellectual Property Rights and rights of confidentiality; or
 - 7.3.12. to spam or send unsolicited advertising or promotional materials.
- 7.4. The Customer shall notify the Company immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services. The Customer shall indemnify the Company fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which the

Company may suffer or incur as a result of any fraud or illegal or improper use (with or without Customer's authorisation) of the Services.

- 7.5. The Customer will not use the Services to access any computer, network, or data without authorisation or in a manner which exceeds authorisation including, any attempt to:
 - 7.5.1. retrieve, alter, or destroy data;
 - 7.5.2. probe, scan or test the vulnerability of a system or network; or
 - 7.5.3. breach, or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.
- 7.6. The Customer must:
 - 7.6.1. ensure that Customer Equipment, Customer Computer System and connectivity shall be adequate to enable the Company to efficiently provide the Services;
 - 7.6.2. ensure that the Company shall have such remote and other access to the Customer Computer System and infrastructure of the Customer as required to provide the Services and Company Equipment;
 - 7.6.3. enter into and maintain contracts directly with such Authorised Providers as may be necessary to enable the Company to provide the Services and ensure that such contracts permit the Company to request resources directly from each Authorised Provider for and on behalf of the Customer to the extent necessary to provide the Services and/or Equipment or to comply with its obligation under the Agreement;
 - 7.6.4. keep in place software maintenance agreements with the providers of all supported software applications used by the Customer to ensure adequate assistance from such vendors will be available when required by the Company to provide the Services and/or Company Equipment;
 - 7.6.5. take all reasonable precautions to protect the health and safety of the Company's, employees, personnel, agents, Authorised Providers and sub-contractors whilst at the Customer's Site;
 - 7.6.6. ensure that it is the owner of or is entitled to use the Customer Computer System and Customer Equipment which is the subject of the Services to be provided by the Company (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment), or that it is authorised by the owner thereof to make them available to the Company for the purpose of providing the Services and/or Company Equipment;
 - 7.6.7. ensure that any Customer Computer System and Customer Equipment connected (directly or indirectly) to or used with the Services is compatible with the Service and where applicable be on the authorised equipment list provided by the Company from time to time. Any Customer Equipment not listed as authorised equipment by the Company, where applicable, will not be supported by the Services;
 - 7.6.8. ensure that the details of the existing Customer Computer System it uses and all current licenses it holds for software are complete, accurate and in full force and effect for the duration of the Term and provide evidence to demonstrate compliance with this clause 7.6.8 to the Company on request;
 - 7.6.9. ensure that any software, Documentation, manuals (if any) or any other documents provided by the Company to the Customer to enable the Customer to receive and use the Services and/or Company Equipment, are used for the Customer's internal use only and, except as permitted by applicable law or as expressly permitted under the Agreement.
 - 7.6.10. not, without the Company's prior written consent, to copy, de-compile or modify any Software provided by the Company to the Customer as part of the Services, nor copy the manuals or

- Documentation relating to any such Software, nor knowingly allow or permit anyone else to do so;
- 7.6.11. ensure that all Customer Materials and any customer data provided by it or stored on, or processed by, the servers of the Company shall not be obscene, defamatory, or likely to result in any claim being made against the Company by any third party;
 - 7.6.12. not use the Services and will take all reasonable steps to ensure that the Services and/or Equipment are not used by anyone:
 - 7.6.12.1. in a manner that in the Company's reasonable opinion could materially affect the quality of the Services, or any other services, provided by the Company; and
 - 7.6.12.2. in a manner that that could reasonably be believed to have a detrimental effect on the Company's, Authorised Provider's or the Network Operator's brand or reputation.
 - 7.6.13. comply with all rules, regulations, legislation, statutes and laws that are applicable to the Services and/or Equipment;
 - 7.6.14. comply with all reasonable policies, procedures and practices applicable to the Services and/or Equipment as notified to it by the Company in writing from time to time;
 - 7.6.15. not use the Services or Equipment in a manner that promotes or assists any illegal activity;
 - 7.6.16. provide the Company, its employees, agents, consultants and subcontractors, with access to the Site, Customer premises, office accommodation and other facilities (as the case may be) as reasonably required by the Company to provide the Services, install Company Equipment or otherwise comply with its obligations under the Agreement; and
 - 7.6.17. provide all Customer Information required by the Company and that all such Customer Information shall be accurate, full and provided in a timely manner.
- 7.7. The Customer acknowledges that the Company's ability to perform its obligations under the Agreement is dependent on the Customer's full and timely co-operation as well as the accuracy and completeness of any Customer Materials provided to the Company. The Customer agrees to co-operate with the Company in all matters relating to the Services including without limitation:
- 7.7.1. complying with any operating procedures and any other technical requirements of the Company as may be notified to the Customer from time to time;
 - 7.7.2. complying with the Company's reasonable instructions to ensure the proper use and security of the Services and/or Company Equipment;
 - 7.7.3. providing the Company, its employees, agents, consultants, subcontractors and Authorised Provider with such information or materials as the Company may reasonably require to supply the Services and/or Company Equipment; and
 - 7.7.4. assist the Company with any criminal investigations or any investigation of any regulatory body that applies to the provision of Services and/or Company Equipment.
- 7.8. The Customer will provide the Company with all up to date and accurate information that the Company needs to provide the Services and Company Equipment in accordance with the Agreement.
- 7.9. Use of the Services by the Customer, may carry certain security risks to the systems and networks of the Customer, the Company and third parties including, but not limited to: misuse; unauthorized access; alterations; theft; fraud; destruction; corruption; and cyber-security attacks (**Occurrences**). The Customer will (at its own expense and prior to the Service Go-live Date), implement appropriate security measures including but not limited to the use of firewalls, passwords, access restrictions, encryption, policies, adequate anti-Virus software, physical access restrictions and having adequate disaster recovery policies and processes in place to protect against Occurrences on all equipment and the Customer Computer System (located on the Customer's premises or otherwise in the Customer's control and used in connection with the Services and/or Equipment) whether owned by the Customer, the Company, or a third party. The Customer is responsible for all security measures (even if the Customer uses a third party or the Company to configure and implement them) and shall not introduce any Virus

or Vulnerability to the Customer Computer System or the Network or any software or Equipment provided to it by the Company as part of the provision of Services and/or Equipment.

- 7.10. Where the Customer becomes aware of any Occurrences or any other matters which it knows or suspects will constitute a threat or potential threat to the security of the Services, Equipment or Network, the Customer shall immediately notify the Company of such matters in writing.
- 7.11. Any obligation on the Customer under clauses 7 and 8 not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.
- 7.12. Any breach of this clause 7 shall be deemed to be a material breach of the Agreement and shall entitle the Company to terminate the Agreement without notice with immediate effect if in the Company's reasonable opinion, the Customer is in breach of this Clause 7.
- 7.13. The Customer shall indemnify the Company against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by the Company arising out of or in connection with:
 - 7.13.1. the use or misuse of the Services and/or Company Equipment by the Customer in breach of this Clause 7;
 - 7.13.2. claims of third parties seeking damages for any loss or misuse of data by the Customer;
 - 7.13.3. any breach by the Customer of the use provisions set out in this Agreement;
 - 7.13.4. any use of material prohibited under the Agreement.

8. EQUIPMENT

- 8.1. The Customer shall:
 - 8.1.1. keep all Company Equipment at the Site safe and secure;
 - 8.1.2. not alter or move any Company Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so;
 - 8.1.3. comply at all times with the specified operating procedures and interconnection requirements of the Company concerning Company Equipment as may be notified to it from time to time;
 - 8.1.4. indemnify the Company in respect of, all costs, expenses, and liabilities that the Company incurs as a result of any loss of or damage to Company Equipment, unless directly caused by the Company;
 - 8.1.5. not cause Company Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Company or as otherwise agreed by the Company in writing;
 - 8.1.6. ensure all Company Equipment is insured under the Customer's existing insurance policy;
 - 8.1.7. use Company Equipment only for the purpose of receiving the Services and in accordance with such reasonable instructions as may be given by the Company from time to time;
 - 8.1.8. permit the Company to inspect or test Company Equipment at all reasonable times;
 - 8.1.9. make sure that all Company Equipment is only used to access Services as permitted by the Company or its Authorised Provider; and
 - 8.1.10. not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice Company Equipment in any way. The Customer will allow the Company to inspect, test, modify, change, add to, replace or remove such Company Equipment, either remotely or via a designated maintainer. At the end of the Term, the Customer will allow the Company to access at all reasonable times to collect any Company Equipment in the Customer's possession as at the date of expiry or termination of the Agreement;

- 8.1.11. co-operate with the Company in all matters relating to the Delivery, supply and installation of Company Equipment pursuant to the Agreement.
- 8.2. To the extent that the Company is providing the Customer with Services under the Service Schedule for Maintenance and Technical Support, and/or Services under the Service Schedule for Professional Services in relation to Customer Equipment, the Customer must also comply with its obligations under clause 8.1 above (except clause 8.1.10) in respect of that Customer Equipment (and references to Company Equipment under clause 8.1 shall be understood to include Customer Equipment accordingly).
- 8.3. To the extent that the Company uses Customer Equipment for the provision of the Services the Customer:
- 8.3.1. must maintain and service Customer Equipment to the Company's reasonable instructions and in any event in accordance with the manufacturer's guidelines;
 - 8.3.2. must install and configure Customer Equipment at the Site to enable the Company to provide the Services and comply with its obligations under the Agreement;
 - 8.3.3. undertakes that the Customer has full authority to authorise the Company to perform the Services using Customer Equipment.
- 8.4. It is the Customer's responsibility to make sure that Company Equipment is only used to access Services as permitted and for no other purpose.
- 8.5. The Company shall not be responsible or liable for any delay in the provision or non-performance of the Services which arises directly out of the Customer or Customer's failure to perform its obligations under the Agreement or to co-operate with the Company or to provide complete and accurate Customer Materials all in a timely manner;
- 8.6. The Company does not make any representations, whether express or implied, about whether the Service will operate in combination with any Customer Equipment or Customer Computer System.
- 8.7. The Customer must only use Equipment authorised or approved by the Company for connection to the Network and also comply with all relevant legislation relating to the Customer's use of the Equipment.
- 8.8. The Customer shall at its own cost arrange for the required Site-specific conditions, as notified by the Company, reasonably necessary to supply and/or install the Company Equipment. This will include, without limitation, mains electricity supply, connection points and computer terminals. The Customer shall prepare the Sites in accordance with the Company's reasonable instructions and reinstate them at the Customer's expense after the Company has completed any work necessary for the Company to be able to provide the Services.
- 8.9. The Customer shall ensure that any Customer Equipment it or the Company uses in connection with the Services meets any legal or regulatory requirements and is approved by the Company for connection to the Customer Computer System, Network or other relevant system or infrastructure of the Company. If not, the Customer must immediately disconnect it or allow the Company to do so at the Customer's expense.
- 8.10. Where the Customer has returned Company Equipment pursuant to clause 16.1.5 and in the Company's reasonable opinion, the Company is unable to repurpose the Company Equipment in question, the Company reserves the right to retrospectively charge the Customer for the cost of any replacement Company Equipment.
- 8.11. When returning Company Equipment to the Company pursuant to the Agreement, the Customer must remove any security and other protective features that prevent the Company from accessing such Company Equipment.

- 8.12. Should any Company Equipment be recalled or discontinued upon or after the Commencement Date, the Company reserves the right to supply alternative equipment of the same or better quality as the Company Equipment at the same price.
- 8.13. The Customer shall indemnify the Company against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by the Company arising out of or in connection with:
- 8.13.1. any use or misuse of Company Equipment by the Customer in breach of this Clause 8, or other act or omission of the Customer under or in relation to this Clause 8; and
 - 8.13.2. claims of third parties seeking damages for any loss or misuse of Equipment by the Customer.
- 8.14. Any breach of this Clause 8 shall be deemed to be a material breach of the Agreement and shall entitle the Company to terminate the Agreement without notice with immediate effect if in the Company's reasonable opinion, the Customer is in breach of this Clause 8.

9. WARRANTY TERMS

Equipment purchased by the Customer from the Company

- 9.1. Subject to clause 9.2 and except where the Customer has purchased maintenance services pursuant to a separate agreement with the Company, the Customer may receive the manufacturer's standard warranty in relation to all Equipment purchased by the Customer from the Company (excluding Hire Equipment). It is acknowledged and agreed that no warranties or representations are made by the Company in relation to such Equipment and the Company shall have no obligation to the Customer in relation thereto. The Company will take reasonable steps to provide, in respect of Equipment purchased by Customer from the Company, the benefit of the warranty that the supplier or manufacturer of the Equipment has provided to the Company.
- 9.2. The Customer acknowledges that it will only be able to rely on any manufacturer's warranty if:
- 9.2.1. it can show that it has used the Equipment purchased from the Company in accordance with any documentation (including without limitation this Agreement) provided to it and the reasonable instructions provided by the Company and complied with any other additional terms imposed by the manufacturer; and
 - 9.2.2. title to the Equipment has passed to the Customer pursuant to clause 21.2.1.
- 9.3. The Customer shall be responsible for any loss or damage to the Equipment purchased from the Company caused by an act or omission or negligence of the Customer, and shall (subject to any applicable manufacturer's warranty) also be responsible for the maintenance of such Equipment.

Equipment hired by the Customer from the Company

- 9.4. The Company warrants that during the Term any Hire Equipment shall conform to its description and any applicable specification in all material respects. If such Hire Equipment does not comply with the warranty in this clause 9.4 (**Defect**) the Company shall, at its option, repair or replace the defective Hire Equipment (during the Company's Working Hours only) provided that:
- 9.4.1. the Customer gives the Company's Customer Service Department written notice of the Defect within seven (7) days of the time when the Customer discovers or ought to have discovered the Defect;

- 9.4.2. the Company is given a reasonable opportunity to examine such Hire Equipment and the Customer (where applicable and if asked to do so by the Company) returns the Hire Equipment to the Company's place of business in its original packaging;
 - 9.4.3. the Defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Company's authorised personnel or fair wear and tear; and
 - 9.4.4. the Defect is directly attributable to defective material, workmanship or design.
- 9.5. The Company shall not be obliged to fix any Defect pursuant to clause 9.4 if:
- 9.5.1. the Defect arises because the Customer failed to follow any user manual or other documentation available from the manufacturer or the Company, or the Company's oral or written instructions as to the storage, use or maintenance of the Hire Equipment or (if there are none) standard trade practice;
 - 9.5.2. the Defect is cosmetic damage including but not limited to scratches, dents or cracks;
 - 9.5.3. the Defect arises due to normal wear and tear; or
 - 9.5.4. the Customer, its employees, agents or subcontractors adjust, alter, modify or repair the Hire Equipment without the Company's prior written consent; or
 - 9.5.5. following examination of the Hire Equipment, no Defect is subsequently found by the Company; or
 - 9.5.6. the Defect is caused by improper use of the Services or use outside its normal application;
 - 9.5.7. the Defect is otherwise caused or attributable to the Customer's breach of its obligations under the Agreement.
- 9.6. The Company will not be liable to the Customer for any loss suffered by the Customer (including without limitation loss of profits) arising from any delay or failure by the Customer to notify the Company of such Hire Equipment Defect pursuant to clause 9.4.1, where the Customer ought reasonably to have been aware of such Defect by an earlier date.
- 9.7. If the Company agrees to fix a Defect caused by the circumstances set out in Clause 9.5 or a Defect caused by the Customer or where no Defect is found, the Company may charge the Customer for any work that the Company has undertaken in connection with diagnosing or correcting the Defect at the Company's applicable man-hour rate.
- 9.8. Where the Company agrees to do work outside a Working Day at the request of the Customer, the Company may charge the Customer in accordance with the Company's applicable man-hour rate.

10. DELIVERY

- 10.1. The Company shall use its reasonable endeavours to deliver Company Equipment to the location set out in the Order Form or such other location as the parties may agree (**Delivery Location**) in accordance with the estimated dates for delivery or installation set out in the Order Form. If no such dates are so specified, the Company will deliver the Company Equipment within a reasonable time.
- 10.2. The Customer shall:
- 10.2.1. make the Delivery Location accessible;
 - 10.2.2. prepare the Delivery Location as required for delivery and in accordance with any instructions provided by the Company; and

- 10.2.3. provide the Company with adequate instructions for delivery and, where relevant, installation of the Company Equipment.
- 10.3. Delivery of the Company Equipment is completed on delivery of the Company Equipment at the Delivery Location (**Delivery**).
- 10.4. Any dates for delivery in the Order Form are approximate only, and the time for delivery is not of the essence.
- 10.5. The Company shall have no liability for any failure or delay in delivering Company Equipment to the extent that any such failure or delay is caused by the Customer's failure to comply with its obligations under the Agreement or by a Force Majeure Event. Delays in delivery of Company Equipment shall not entitle the Customer to refuse to take delivery of the Company Equipment.
- 10.6. The Company may deliver Company Equipment by instalments. Any delay or shortfall in delivery shall not entitle the Customer to reject a delivery or cancel any other instalment.
- 10.7. The Customer understands that delivery of Company Equipment is conditional upon availability and the Company shall not be liable if prevented from complying with the Agreement because Company Equipment (or any part of the Equipment) is not readily available by reason of any circumstances outside the control of the Company.
- 10.8. The Customer must give notice in writing of any material damage to the Company Equipment to the Company within 14 (fourteen) days of Delivery of the Company Equipment giving full particulars, including the condition of parcels received, failing which the Company is discharged from any liability in respect of such damage and Delivery of the Company Equipment is deemed to be accepted by the Customer.

11. CHARGES AND PAYMENT

- 11.1. Subject to the terms of the Agreement, the Customer shall pay the Charges:
 - 11.1.1. set out in the Order Form; and
 - 11.1.2. as otherwise payable by the Customer to the Company pursuant to the Agreement.
- 11.2. The Company will send to the Customer within 30 (thirty) days of the Service Go-live Date, an invoice which will include:
 - 11.2.1. Charges payable for Services and/or Equipment provided up to the last day of first calendar month after the Service Go-live Date; and
 - 11.2.2. Charges payable in advance for the provision of Services and/or Equipment for the following calendar month; andthereafter the Company will issue one or more invoice(s) to the Customer each month, quarter, or year (as stipulated in the Order Form) in advance, detailing the Charges for the following month, quarter or year (as the case may be).
- 11.3. The Customer shall pay (in full and cleared funds) the amount of each invoice submitted by the Company by direct debit within 14 (fourteen) days of the date of invoice to the bank account nominated in writing by the Company. If the Customer's credit rating decreases at any time, the Company shall reserve the right to revise the credit terms to require payment upon receipt of such invoice or in less than 14 fourteen days of the date of such invoice.
- 11.4. If the Customer does not pay by Direct Debit pursuant to clause 11.3, the Company has the right to charge a reasonable administrative fee to cover the costs associated with processing the Customer's payment, which will be added to the Customers next invoice and payable in accordance with this clause 11.

- 11.5. The Customer shall pay the Charges in pounds sterling without set-off, counterclaim, deduction or withholding.
- 11.6. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.
- 11.7. If at any time the Company discovers that the Customer has not been billed for the full value of the Services agreed in accordance with the Agreement, the Company is entitled to pass through these costs on to the Customer following the discovery or notification of these Charges within 12 (twelve) months following the discovery that such Charges has not been billed to the Customer. The Company will provide the Customer with 30 days' prior written notice confirming that these Charges will be passed on and invoiced as a one-off independent invoice. The Customer is aware that ongoing pricing may be adjusted on the monthly invoice if it is found that Services had not been billed historically which the customer has benefitted and will continue to benefit from.
- 11.8. Time for payment of the Charges shall be of the essence of the Agreement.

Late payment

- 11.9. If the Customer fails to make payment in full by the due date then, without prejudice to any other rights or remedies available to the Company under the Agreement or in law, the Company reserves the right to charge interest on any amounts outstanding from the due date for payment until payment is made in full. Interest under this clause 11.9 will accrue each day at 4% a year above Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Customer shall pay the interest together with the overdue amount.

Additional Charges/Price variations

- 11.10. If the Company's agents, subcontractors, consultants, third party suppliers or employees are unable to access the Customer's premises, offices or other facilities for any reason at the date/time agreed by the Parties or are unable to perform the Services at the Site for any reason such as the Customer providing inaccurate information, then the Services will not be provided and the Company will charge the Customer the Company's reasonable costs incurred for responding to the Customer's request for Services and complying with its obligations under this Agreement (**Call-Out Charge**).
- 11.11. Except where the Customer is a Microenterprise or Small Enterprise Customer or Not-for-Profit Customer, the Company reserves the right to apply an annual increase in the monthly, quarterly or annual recurring Charges (as the case may be) based on the Retail Prices Index (RPI) plus 3.9%. The Company will base their increase upon the RPI figures published by the Office for National Statistics (<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/czbh/mm23>) as a mean average over the 12-month period prior to the increase, and such increase will take effect at the beginning of January each calendar year or, failing this, by no later than the 30 April each year. The Company will provide the Customer with 30 days' prior written notice of any increase to the Charges pursuant to this clause 11.11 before this is applied to the Customer's invoice. Should there be no increase (or a negative value) the Company shall be entitled to increase the Charges by 3.9%. For example:
- (i) using an RPI value of 1.1% + 3.9%, this would mean a monthly payment of £100 would increase to £105; or
 - (ii) using an RPI value of 6.1% plus 3.9% this would mean a monthly payment of £100 would increase to £110; or
 - (iii) using an RPI value of 0% or less, this would mean your monthly payment of £100 would increase to £103.90.
- 11.12. The Company may increase its Charges during the Minimum Term and any applicable Subsequent Term as a consequence of any legal or regulatory change or as required by an OFCOM direction, determination, order, or similar decision.
- 11.13. The Company may, by giving the Customer notice at any time before Delivery, increase the price of the Equipment to reflect any increase in the cost of the Equipment that is due to:

- 11.13.1. any factor beyond the Company's control (including price increases imposed by the manufacturer or the supplier of the Equipment to the Company, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other relevant costs);
 - 11.13.2. any request by the Customer to change the Order Form in respect of the Equipment (including but not limited to any estimated delivery date(s), delivery address(es), or quantities or types of Equipment set out in the Order Form); or
 - 11.13.3. any delay caused by any instructions of the Customer's failure to give the Company adequate or accurate information or instruction.
- 11.14. The Customer acknowledges that termination of an Agreement by the Customer (or any part thereof) may trigger payment of Cease Charges. Such Cease Charges are payable by the Customer on termination of the Agreement (or any part thereof) in addition to, where applicable, the Balance of Contract in accordance with clause 16.2.
- 11.15. The Customer shall pay any Charges raised to cover time spent dealing with matters (such as repairing Defects) where this work is not covered under any of the terms of the Agreement. Such Charges could involve the provision or rearrangement of Equipment, wiring, network, or services.
- 11.16. If the Company becomes liable to pay any late billed charges from the Company's Authorised Providers or Network Operators, the Company is entitled to pass through these costs on to the Customer within 6 (six) months of discovery or notification of these charges. Before issuing the invoice for payment of such charges, the Company will provide the Customer 30 days' prior written notice confirming that such late billed charges will be passed on and invoiced as a one-off independent invoice.
- 11.17. In the unlikely event that the Company becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority (such as OFCOM) or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services and/or Equipment to the Customer under the Agreement, the Company shall be entitled to pass through such fees, costs, and charges to the Customer by giving 30 days' prior written notice to the Customer.
- 11.18. Where the Company agrees to provide Services outside a Working Day at the request of the Customer, the Company may charge the Customer in accordance with the Company's applicable man-hour rate.
- 11.19. In the event that the Company incurs additional costs and/or charges in supplying the Services to the Customer the Customer will pay such additional costs when it is due to pay for the Services.
- 11.20. Subject to clauses 11.21 – 11.22 (inclusive), the Customer shall be entitled to terminate the Agreement, within 30 (thirty) days of being notified by the Company of any increase to the Charges, if such increase to the Charges causes material detriment to the Customer.
- 11.21. For the avoidance of doubt, any increase to a Customer's monthly, quarterly or annually Charges by 10% or less shall not constitute a material detriment to the Customer under clause 11.20.
- 11.22. Subject to clause 11.21, the Customer's right to terminate under clause 11.20 above will only be effective if:
- 11.22.1. the Company cannot resolve any concern raised by the Customer to the Customer's reasonable satisfaction within 30 (thirty) days of receipt of the termination notice, and
 - 11.22.2. where the increase to the Charges or the variation of the Agreement have not been agreed by the Customer and/or arise as a consequence of the change in prices, tariff, terms or otherwise made by Authorised Provider's, Network Operators or regulating body (such as OFCOM).

Disputing invoices

- 11.23. If the Customer disputes any invoice (including the calculation of any amounts payable) they must notify the Company within 12 (twelve) months of the date of the invoice. The Customer shall not be entitled to any credit or refund relating to disputes raised after expiry of this period. Any undisputed amounts set

out in the relevant invoice shall be paid in full by the Customer in accordance with the terms of the Agreement.

Effect of termination

- 11.24. Termination of the Agreement in accordance with clause 11.20 will not affect the Customer's requirement to pay the Charges for Services and/or Company Equipment provided up to the date of termination but, in this event, the Customer will not be required to pay the Balance of Contract.

12. VARIATION OR WITHDRAWAL OF SERVICES

- 12.1. The Company shall have the right to make any changes to the Services or withdraw the Services (or any part thereof) to the extent required to comply with any applicable law or regulation or OFCOM direction, determination, order or decision.
- 12.2. The Company may:
- 12.2.1. change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features or changing third party providers; and
 - 12.2.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. The Company can change the way they are presented, delivered or otherwise made available to the Customer at any time.
- 12.3. Where a change to, or withdrawal of, a Service arises pursuant to clauses 12.1 and 12.2:
- 12.3.1. solely due to the Company's business requirements; or
 - 12.3.2. for legal or regulatory reasons,
- the Company will give as much notice to the Customer as is reasonably practicable in the circumstances.
- 12.4. Where the Company is entitled to change or withdraw Services and/or Equipment pursuant to this clause 12 it may, at its sole discretion:
- 12.4.1.1. terminate the Agreement pursuant to clause 14.3 without incurring liability to the Customer; or
 - 12.4.1.2. offer the Customer a new alternative service or equipment option for acceptance.
- 12.5. If the Company terminates the provision of Services and/or Equipment (or any part thereof) pursuant to clause 12.4.1.1, the Company will inform the Customer in the notice issued pursuant to clause 12.3 and termination will take effect on the date specified under such notice and, in such event, the Customer will not be liable to pay the Balance of Contract.
- 12.6. If in the reasonable opinion of the Customer, the Customer reasonably considers the new service offered pursuant to clause 12.4.1.2 to be materially different to the service withdrawn or modified and provides written reasons for this view, the Customer may terminate the Agreement without incurring the Balance of Contract, within 30 days of receiving notice from the Company pursuant to clause 12.3. If the Customer does not exercise its right to terminate pursuant to this clause 12.6, the Customer shall be deemed to have accepted the new service.
- 12.7. The Company may relocate a connection within the Network for reasons including security, improvements to infrastructure, capacity management, cost reduction or mitigation of a known fault, provided any such relocation will not have an adverse effect on the Services. In the unlikely event that the relocation will have an adverse effect on the relevant Services, the Customer may terminate the Services without incurring the Balance of Contract within 30 days of receiving notice pursuant to clause 12.3. If the Customer does not exercise its right to terminate pursuant to this clause 12.6, the Customer shall be deemed to accept such relocation.

13. SUSPENSION

Compliance with laws or directions from regulatory authority

13.1. The Company reserves the right at any time during the Term to suspend or vary the Services with written notice to the Customer:

13.1.1. to the extent reasonably necessary in order to comply with any relevant law or regulation or direction from a competent authority;

Actions of the Customer and/or fraud

13.1.2. if the Company reasonably believes the Customer has provided false or misleading details about the Customer;

13.1.3. if the Company advises the Customer that the Customer's excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;

13.1.4. if the Company receives a serious complaint against the Customer which the Company believes to be genuine;

13.1.5. if the Company reasonably believes that the Customer has used the Services for illegal or improper purposes in contravention of the Company's requirements;

13.1.6. if the Company reasonably suspects or believes that the Customer is in breach of clauses 7 or 8;

13.1.7. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges; or

13.1.8. if the Customer's financial position significant deteriorates during the Term;

Maintenance and emergencies

13.1.9. if the Company, Openreach or other Network Operator needs to modify, expand, improve, maintain, or repair the Services and/or Equipment or vary Network capacity; or

13.1.10. during any technical failure, modification or maintenance of the telecommunications systems by which the Services are provided; or

13.1.11. The Company will provide a minimum of 3 (three) Working Days' notice of all scheduled outages which may impact availability of the Services.

13.1.12. due to an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's own security.

13.2. The Company shall have the right to suspend or deny access to the Network:

13.2.1. in relation to any equipment which will or may adversely affect the operation of the Network or provision of the Services whether or not such equipment has been approved or tested by the Company; or

13.2.2. if the Company suspects that fraudulent, criminal, or illegal activities are being carried out, or are likely to be carried out, via that equipment, or

13.2.3. the Company's contract with its Authorised Provider or Network Provider to the Services is suspended, varied or terminated; or

13.2.4. whenever in the Company's absolute discretion it considers necessary or desirable in order to monitor or reduce the incidence of fraud.

13.3. The Company will notify the Customer in advance of the details of any incident, or where the Company has relied on its rights under this Clause 13 to interrupt or disconnect the provision of a Service.

- 13.4. The Customer will be responsible for all Charges incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services (other than by the Company or its representatives)
- 13.5. Unless otherwise stipulated in the Agreement, the Company is not obliged to detect unauthorised or fraudulent use of the Services by a third party and does not monitor for any such fraudulent or unauthorised use.
- 13.6. The Company shall endeavour to restore the Services suspended in accordance with clauses 13.1.1 (inclusive), 13.1.9-13.1.12 (inclusive) (maintenance and emergencies) and 13.2.1 of this Master Services Agreement as soon as reasonably practicable.
- 13.7. Subject to clause 13.9, if the Company has suspended the Services in accordance with clauses 13.1.2-13.1.8 (inclusive) (Actions of the Customer and/or fraud) or clauses 13.2.2-13.2.4 the Company may resume provision of the Services if the Customer remedies the circumstances within 7 (seven) days after being notified in writing by the Company to do so. If the Customer fails or is unable to remedy such circumstances, the Company may terminate provision of the services with immediate effect by giving the Customer written notice.
- 13.8. The Customer shall reimburse the Company for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer pursuant to clauses 13.1.2-13.1.8 (inclusive).
- 13.9. The re-instatement of suspended Services shall be at the Company's sole discretion and the Customer shall nevertheless be responsible for payment of the Charges during any period where the Services are suspended pursuant to clauses 13.1.2-13.1.8 (inclusive) (actions of the Customer and/or fraud) or clauses 13.2.2-13.2.4 (inclusive).

14. TERMINATION

Termination for convenience

- 14.1. Subject to clause 14.2, the Customer may terminate the Agreement:
- 14.1.1. during the Minimum Term by giving a minimum of ninety (90) days prior written notice to the Company.
 - 14.1.2. during any Subsequent Term by giving the Company not less than 30 days' prior written notice to the Company.
- 14.2. If the Customer terminates the Agreement pursuant to clause 14.1, and termination takes effect before expiry of the Minimum Term or any Subsequent Term (as the case may be), the Customer will be required to pay the Balance of Contract to the Company in accordance with clause 16.1.2.
- 14.3. The Company may terminate the Agreement (or the provision of any part of the Service under a Service Schedule) at any time during the Minimum Term or any Subsequent Term by providing the Customer with not less than 30 (thirty) days' written notice.

Termination for cause

- 14.4. Either Party may immediately terminate an Agreement by written notice if the other Party:
- 14.4.1. commits a material breach of any of the terms of an Agreement and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of receipt of notice in writing to do so; or
 - 14.4.2. commits a material breach of any of the terms of an Agreement that is not capable of being remedied; or
 - 14.4.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or enters into bankruptcy or insolvency proceedings or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part

of the other Party's assets or the other Party suffers seizure of any of its property for non-payment of monies owing; or

- 14.4.4. the Customer's financial position deteriorates so far as to reasonably justify the opinion of the Company that the Customer's ability to give effect to the terms of this agreement is in jeopardy.
- 14.5. The Company may, without prejudice to any of its other rights under the Agreement, terminate an Agreement with immediate effect by notice in writing without liability to the Customer in the event that:
 - 14.5.1. the Company is not, for whatever reason, permitted or authorised to provide the Services;
 - 14.5.2. the Company reasonably considers that the breach, act, omission, or default of the Customer may result in the Company's failure to comply with any applicable legislation or may place the Company in breach of its agreement with the Network Operator;
 - 14.5.3. use by the Customer of the Network or the Services is, or is likely to cause damage to, interrupt or otherwise prevent the Company from supplying the Services to other customers or complying with obligations owed to other customers;
 - 14.5.4. the Customer fails to pay the Charges when due;
 - 14.5.5. such action is required to comply with a direction from OFCOM or any competent authority to suspend or cease the provision of the Service or any part of it;
 - 14.5.6. such action is required in order to comply with any applicable laws, statutes, regulations or codes;
 - 14.5.7. the Company has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity;
 - 14.5.8. the Customer moves premises without notifying the Company;
 - 14.5.9. the Company is unable to complete a Site survey pursuant to clause 5.3, or the results of such Site survey are not, in the reasonable opinion of the Company or its Authorised Provider, satisfactory;
 - 14.5.10. the Company's agreement with the Network Operator or Authorised Provider is terminated for any reason; and/or
 - 14.5.11. the Customer breaches clause 7.3 or clause 7.5.
- 14.6. The Company reserves the right to terminate the Agreement by giving 30 (thirty) days' written notice to the Customer if a Service, or any part thereof, is discontinued by an Authorised Provider or Network Operator responsible for providing any part of that Service.
- 14.7. The rights to terminate an Agreement given by this Clause 14 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 14.8. Termination or expiry of one Agreement shall not affect any other Agreements made pursuant to this Master Services Agreement.

15. TRANSITIONAL SERVICES

- 15.1. If the Customer continues using the Services or requests the Company to provide the Services after the termination date, then the Company may, at its absolute discretion, continue providing the Services to the Customer until either party terminates in accordance with clause 15.6 below (**Transitional Services**).
- 15.2. Except where the Customer is a Microenterprise or Small Enterprise Customer or Not-For-Profit Customer:
 - 15.2.1. as of the date of termination of the Agreement, the Customer shall pay a monthly administration fee to cover the Company's cost for retaining and managing the

Customer's account for the purpose of providing the Transitional Services required by the Customer (**Retention Fee**); and

- 15.2.2. the charges payable by the Customer for Transitional Services pursuant to this clause 15 will be calculated in accordance with the Company's standard prevailing rates applicable at the date termination of the Agreement takes effect (irrespective of whether the Customer benefitted from a discount on the Company's standard rate during the Term of the Agreement).
- 15.3. Where the Customer is a Microenterprise or Small Enterprise Customer or Not-For-Profit Customer, Transitional Services will be provided on the same terms as those under the Agreement unless it is not technically feasible for the Company to do so.
- 15.4. The Customer shall pay the Transitional Service Charges and the Retention Fee in accordance with the Agreement.
- 15.5. The Company reserves the right to refuse the provision of Transitional Services if the Company terminates this Agreement in accordance with clauses 14.4 - 14.6 or if any amount due to the Company remains outstanding as at the date of termination.
- 15.6. Either party may terminate the Transitional Services at any time by giving the other party not less than 30 days' written notice or such other shorter period that the Company may agree to in writing.
- 15.7. For the avoidance of doubt, this clause 15 shall survive termination of this Agreement and the Customer's obligations under this Agreement will apply mutatis mutandis.

16. EFFECTS OF TERMINATION

- 16.1. Upon termination or expiry of the Agreement for any reason:
 - 16.1.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and/or Company Equipment 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;
 - 16.1.2. Where the Customer is obliged under the Agreement to pay the Balance of Contract, the Company shall submit an invoice, which shall be payable by the Customer within 14 (fourteen) days of the date of such invoice;
 - 16.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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;
 - 16.1.4. clauses which expressly or by implication survive termination shall continue in full force and effect;
 - 16.1.5. the Customer shall promptly return to the Company all Company Equipment, materials and property belonging to and supplied by the Company in connection with this Agreement;
 - 16.1.6. the Customer shall promptly return to the Company all documents and materials (and any copies) containing the Company's Confidential Information and, to the extent possible, erase any such Confidential Information from the Customer Computer System. Any digital copies of the Company's Confidential Information (which includes without limitation personal data), are considered deleted where they are put beyond further use by the Customer;
 - 16.1.7. the Customer shall assist the Company with disconnecting Customer Equipment from the Service;
 - 16.1.8. the Customer shall cease to use, and delete, all instances of the Software; and
 - 16.1.9. unless otherwise agreed in writing by the Company:
 - 16.1.9.1. all rights and licences of the Customer under the Agreement shall terminate;
 - 16.1.9.2. the Customer shall cease to use the Services; and

16.1.9.3. the Company shall withdraw all passwords, accounts and/or access to the Services.

- 16.2. On termination or expiry of the Agreement by the Customer (or any part thereof), the Customer accepts and acknowledges that Cease Charges will be payable by the Customer in addition to, where applicable, the Balance of Contract.
- 16.3. On termination of an Agreement (or any part thereof), the Company will raise an invoice in respect of any Charges payable by the Customer as a result of termination pursuant to clause 14, and such Charges will be payable by the Customer (in full, without set-off, deduction or lien) within 14 (fourteen) days of the date of the invoice to a bank account nominated in writing by Company.

17. SURVIVAL

17.1. On termination (or expiry) of the Agreement, the following clauses shall continue in force:

- 17.1.1. Clause 1 (Definitions and Interpretation);
- 17.1.2. Clause 2 (Structure of the Agreement)
- 17.1.3. Clause 11 (Charges and payment)
- 17.1.4. Clause 14 (Termination)
- 17.1.5. Clause 15 (Transitional Services),
- 17.1.6. Clause 16 (Effects of Termination),
- 17.1.7. Clause 17 (Survival),
- 17.1.8. Clause 18 (Limitation of liability),
- 17.1.9. Clause 19 (Confidentiality),
- 17.1.10. Clause 22 (Intellectual Property Rights); and
- 17.1.11. Clause 29.8 (Governing law and Jurisdiction).

18. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 18.1. This Clause 18 sets out the Company's entire liability (including any liability for acts or omissions of the Company's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.
- 18.2. Except as set out in the Agreement, the Company provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.
- 18.3. Subject to clause 18.5 and 18.6, the Company's total aggregate liability under or in connection with an Agreement, whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed in relation to a single claim (or series of related claims), the Charges payable by the Customer to the Company in relation to that Agreement in the 12 (twelve) months prior to the date of the claim.
- 18.4. Subject to Clause 18.5 and 18.6 the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection

with the performance or contemplated performance of all Agreements shall not exceed £1,000,000 (one million pounds sterling).

- 18.5. Subject to Clause 18.6, the Company shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:
- 18.5.1. loss of profits;
 - 18.5.2. loss of revenue;
 - 18.5.3. loss of income or business;
 - 18.5.4. depletion or loss of goodwill, reputation, or similar losses;
 - 18.5.5. loss of anticipated savings;
 - 18.5.6. loss of or corruption of data or information;
 - 18.5.7. loss of use;
 - 18.5.8. loss of contract; or
 - 18.5.9. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges, or expenses whatsoever and howsoever caused.
- 18.6. Nothing in the Agreement shall exclude or limit the liability of the Company for:
- 18.6.1. death or personal injury resulting from the Company's negligence; or
 - 18.6.2. for fraud or fraudulent misrepresentation; or
 - 18.6.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 18.7. Subject to Clause 18.6, to the extent the Company are using a third party Network Operator, the Company shall not be liable for any direct or indirect loss or damage (whether physical, financial or otherwise) howsoever arising from the act or default of the Network Operator, Authorised Provider or any other third party.
- 18.8. The provisions of this clause 18 shall survive termination or expiry of the Agreement.

19. CONFIDENTIALITY

- 19.1. During the Term of this Agreement and for 3 (three) years after expiry or termination (as the case may be), each party must:
- 19.1.1. keep the other party's Confidential Information confidential and will not (whether directly or indirectly) disclose, use, copy, or modify any the other party's Confidential Information except as permitted under clause 19.2; and
 - 19.1.2. use the Confidential Information exclusively for the purposes contemplated by the Agreement only.
- 19.2. A party may disclose the other party's Confidential Information to its employees that need to know such information for the purpose of exercising its rights or carrying out its obligations under or in connection with the Agreement.
- 19.3. This Clause 19 shall not apply to Confidential Information that a party can prove:
- 19.3.1. is in the public domain otherwise than by that party's breach;
 - 19.3.2. was available to that party on a non-confidential basis prior to obtaining the information directly or indirectly from the other party; or
 - 19.3.3. a third party subsequently disclosed to that party free of restrictions on disclosure and use.

- 19.4. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party, or to be implied from this Agreement.
- 19.5. No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

20. DATA PROTECTION

- 20.1. Under this clause 20, references to Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures shall have the meaning set out in, and be interpreted in accordance with, Data Protection Legislation.
- 20.2. Each party shall, at its own expense, comply with all applicable requirements under Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace a party's obligations or rights under Data Protection Legislation.
- 20.3. The Customer acknowledges that the Company will share Customer Personal data with its Authorised Providers or Network Operators the Company uses to help deliver its Services and/or Equipment to the Customer in accordance with the Agreement and to send the Customer updates about its products or services, including notice of any promotional offers or new products and/or services.
- 20.4. The Customer shall ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of personal data to the Company for the duration of the Agreement and thereafter, to the extent this is required by the Company to comply with any post-termination obligations under an Agreement.
- 20.5. Clauses 20.6 - 20.9 (inclusive) only apply to the extent that the Company is processing Personal Data on the Customer's behalf. In relation to Personal Data for which the Company is the Controller, the Company will process such Personal Data in accordance with the Company's Privacy Notice which can be found on the relevant Company Website(s).
- 20.6. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Company is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of the Data Subject.
- 20.7. The Customer warrants that the Customer Data supplied to the Company does not contain any sensitive or special category personal data and undertakes not to supply any such data without the Company's prior written consent.
- 20.8. Without prejudice to the generality of 20.2, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
- 20.8.1. process that Personal Data only on the documented written instructions of the Customer unless the Company is required by law to otherwise process that Personal Data. Where the Provider is relying on compliance with the law as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by law unless the applicable law prohibits the Company from so notifying the Customer;
- 20.8.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state

of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 20.8.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 20.8.4. not transfer any Personal Data outside of the EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 20.8.4.1. the Customer or the Company has provided appropriate safeguards in relation to the transfer;
 - 20.8.4.2. the data subject has enforceable rights and effective legal remedies;
 - 20.8.4.3. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 20.8.4.4. the Company complies with reasonable instructions of which it is notified in advance by the Customer with respect to the processing of the Personal Data;
- 20.8.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 20.8.6. notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 20.8.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by law to store the Personal Data; and
- 20.8.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 20.8.

20.9. The Customer consents to the Company appointing the Authorised Providers as a third-party processor of Personal Data under this agreement. The Company confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Company confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Company, the Company shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 20.9.

20.10. The Company may, at any time on not less than 30 (thirty) days' notice to the Customer, revise this clause 20 to give effect to changes to Data Protection Legislation.

21. TITLE AND RISK

21.1. Subject to clause 21.3, the risk in Company Equipment shall pass to the Customer on Delivery. For the avoidance of doubt, where Company Equipment is Delivered in instalments, risk in the Company Equipment in each instalment shall pass upon completion of each instalment Delivery.

21.2. Except otherwise stipulated in the applicable Service Schedule and subject to clause 22:

- 21.2.1. title in Equipment purchased by the Customer will not pass to the Customer until the Company has received payment of all Charges for the Equipment in full and any other amounts owing to the Company whether under that Agreement or any other agreement between the Parties; and
 - 21.2.2. title in Company Equipment shall remain at all times with the Company or other third party proprietor. The Customer has no right, title or interest in Company Equipment except that it is provided to the Customer for the duration of and on the terms of the Agreement.
- 21.3. In relation to Hire Equipment (whether hired by the Customer from the Company free of charge or for a fee):
 - 21.3.1. risk in such Hire Equipment will pass immediately to the Customer when the Hire Equipment leaves the Company's physical possession or control;
 - 21.3.2. risk in such Hire Equipment will not pass back to the Company from the Customer until such Hire Equipment is back in the Company's physical possession;
 - 21.3.3. title in Hire Equipment shall remain at all times with the Company or other third party proprietor; and
 - 21.3.4. the Customer cannot sub-license, assign or otherwise transfer the rights granted under the Agreement. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any rights to withhold, disposing and/or leasing the Hire Equipment.
- 21.4. Where the Customer is in possession of Equipment to which title is with the Company pursuant to this clause 21, the Customer must take out and maintain appropriate insurance policies with reputable insurers in respect of such Company Equipment and provide copies of such insurance policies to the Company on request.
- 21.5. Until title to the Equipment purchased by the Customer from the Company has passed to the Customer pursuant to the Agreement, the Customer shall:
 - 21.5.1. Store Company Equipment separately from all other goods or equipment held by the Customer so that they remain readily identifiable as the Company's property;
 - 21.5.2. Not remove, deface or obscure any identifying mark or packaging on or relating to the Company Equipment;
 - 21.5.3. Maintain Company Equipment in satisfactory condition and keep them insured with a reputable insurer against all risks for their full price on the Company's behalf from the date of delivery, and provide copies of such insurance to the Company on request;
 - 21.5.4. Give the Company such information relating to the Company Equipment as the Company may require from time to time; and
 - 21.5.5. on request by the Company, deliver up all Company Equipment in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the relevant Company Equipment are stored in order to recover them.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1. Unless otherwise agreed in writing, all Intellectual Property Rights in and to the Services, System and Documentation belong, and shall continue to belong, to the Company and/or its licensors (as appropriate). Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights or any other rights or licences in respect of the Services or the Documentation.
- 22.2. The Customer acknowledges that it shall have no licence, right, title or interest in or to any Intellectual Property Rights of the Company or its licensors except as set out in the Agreement. Without prejudice

to the right of the Customer or any third party to challenge the validity of any Intellectual Property Rights of the Company or its Authorised Provider, the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Company or its Authorised Provider and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.

- 22.3. The Customer shall own all rights, title and interest in and to the Customer Materials, Customer Equipment and Customer Computer System shall have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 22.4. The Customer hereby grants to the Company a transferable, non-exclusive, irrevocable right to use, copy, modify and prepare derivative works of the Customer Materials and Customer Computer System to the extent necessary to enable the Company to perform the Services and provide the Equipment in accordance with the Agreement.
- 22.5. The Customer warrants and represents that the receipt and use of the Customer Materials and Customer Computer System by the Company, its employees, subcontractors, consultants or third party suppliers shall not infringe the rights (including but not limited to the Intellectual Property Rights) of any third party.
- 22.6. The Customer will not be entitled to and agrees not to:
 - 22.6.1. use in the course of trade or otherwise in relation to any goods or services of the Customer, any registered or unregistered trademark, logotype or abbreviation of the name of the Company (or any of its suppliers) or any part thereof so that any person might reasonably import a connection between those goods or services and the Company (or any of its suppliers) or any part thereof;
 - 22.6.2. register or attempt to register any Intellectual Property Rights of the Company or its third party licensors or suppliers;
 - 22.6.3. authorise any third party to do anything referred to in clause in this clause 22.6.
- 22.7. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to 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 for actual or alleged infringement of any third party's rights (including but not limited to Intellectual Property Rights) arising out of, or in connection with the receipt and use of Customer Materials and/or Customer Computer System.
- 22.8. This Clause shall survive termination or expiry of the Agreement.

23. SOFTWARE

- 23.1. If the Company supplies or provides any Third-Party Software to the Customer pursuant to the Agreement, then such Third Party Software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such Third Party Software at the time of supply or provision. The Customer undertakes to:
 - 23.1.1. use such Third Party Software strictly in accordance with such terms and conditions, which have been provided to it by the Company;
 - 23.1.2. enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any Third Party Software supplied to the Customer for the purpose of accessing the Services.
- 23.2. If the Customer does not accept the licence terms relating to Third Party Software as required under clause 23.1, the Customer is not authorised to use it and the Company shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of such Third Party Software.

- 23.3. The Customer shall accept and comply with all licence terms required from time to time by any third party provider of any software or materials as agreed between the relevant third party.
- 23.4. This Clause shall survive termination or expiry of the Agreement.

24. CIRCUMSTANCES BEYOND REASONABLE CONTROL

- 24.1. The Company will not be liable to the Customer for any failure or delay in performing the Company's obligations under the Agreement or supplying the Services or Equipment:
- 24.1.1. as a result of a Force Majeure Event;
 - 24.1.2. if another supplier delays or refuses the supply of an electronic communications service to the Company or any of the Company's suppliers and no alternative service is available at reasonable cost; or
 - 24.1.3. if legal or regulatory restrictions are imposed upon the Company or any of the Company's suppliers that prevent the Company or any of the Company's suppliers from supplying the Service.
- 24.2. If the Force Majeure Event prevents the Company from providing any of the Services (or any substantive or material element thereof) for more than 12 (twelve) weeks, the Customer shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Company

25. NOTICES

- 25.1. Notices must be in writing. The address for service on the Company (subject to any change notified by the Company) is: Glebe Farm, Down Street, Dummer, Basingstoke, Hampshire RG25 2AD. The address for service on the Customer is as set out in the most recent invoice.
- 25.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

26. DISPUTES

- 26.1. The Company shall use its reasonable endeavours to resolve any Customer complaints in accordance with its Customer Complaints policy available on the Company Website (www.sterlingcommunications.uk).
- 26.2. If a dispute arises between a Microenterprise or Small Enterprise Customer or Not-For-Profit Customer and the Company out of or in connection with this Agreement or the performance, validity or enforceability of it which cannot be resolved in accordance with clause 26.1 to the customer's reasonable satisfaction (**Dispute**) then except as expressly provided in this Agreement, the parties will attempt to settle the Dispute by mediation in accordance with the rules and procedures of the Communications Ombudsman. The mediator shall be nominated by the Communications Ombudsman. To initiate the mediation, either party will serve notice in writing (**ADR notice**) to the other party to the Dispute, informing them of their right to mediation. A copy of the ADR notice should be sent to the Communications Ombudsman. Unless otherwise agreed between the Parties, the mediation will start not later than 30 (thirty) days after the date of the ADR notice.
- 26.3. No party may commence any court proceedings under clause 29.8 in relation to the whole or part of the Dispute until 60 (sixty) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

- 26.4. If the Dispute is not resolved within 60 (sixty) days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 60 (sixty) day period, or the mediation terminates before the expiry of that 60 (sixty) day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 29.8 (Governing law and Jurisdiction).

27. ENTIRE AGREEMENT

- 27.1. It is acknowledged and agreed that the Agreement (as defined above) shall form the entire agreement between the Parties in relation to the subject matter of that Agreement and shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter thereof.
- 27.2. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently).
- 27.3. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

28. VARIATION

- 28.1. Except as otherwise set out in the Agreement, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed by the Parties in writing and signed by an authorised representative of each Party.
- 28.2. The Company may vary the terms of the Agreement at any time. Except where the variation is purely administrative in nature, the Company will provide the Customer with not less than 30 days' prior written notice to the Customer of any variation to the Agreement.

29. GENERAL

- 29.1. Invalidity
- 29.1.1. If any of the provisions of the Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.
- 29.2. Non-solicitation
- 29.2.1. Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply from commencement of the first Contract between the parties and will continue until there has been no Contract between the parties for a continuous period of 6 (six) months (and if there is subsequently a Contract between the parties the non-solicitation period will re-commence).
- 29.2.2. A party may as a condition of granting its consent under clause 29.2.1 above, require the other party to pay to it a fee of 30% of the person's gross annual remuneration to cover the cost of replacing the employee or contractor.
- 29.3. Assignment and other dealings.
- 29.3.1. The Company may at any time assign, transfer, mortgage, charge, subcontract, or deal in any other manner with all or any of the Company's rights under the Agreement and may subcontract or delegate in any manner any or all of the Company's obligations under the Agreement to any Authorised Provider, other third party or agent.

- 29.3.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 29.4. Severance.
 - 29.4.1. Each of the clauses of these Terms and conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 29.5. Waiver.
 - 29.5.1. Any failure by the Company to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent the Company from exercising or enforcing such right at a later time.
- 29.6. No partnership or agency.
 - 29.6.1. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 29.7. Third parties.
 - 29.7.1. A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 29.8. Governing law and Jurisdiction .
 - 29.8.1. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English law.
 - 29.8.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 - DATA PROTECTION

Some of the Services we provide involve the Company processing Personal Data on the Customer's behalf. All processing by the Company shall be in compliance with clause 20 of this Master Services Agreement and Data Protection Legislation.

Where the Company (as the Customer's Data Processor) processes Personal Data on behalf of the Customer (as Controller), the Company will do so on the basis set out in this Schedule 1 (where capitalised terms have the meaning set out in the Data Protection Legislation).

Scope of Processing

The Company Processes Personal Data to enable it to provide, manage, enhance, review and service the Services and/or Equipment and to discharge any legal or regulatory obligations imposed upon it.

Nature and purpose of processing

The Company Processes the Personal Data to:

- a) make informed decisions about Customers and the Services and Equipment;
- b) perform day to day management of accounts and Services and Equipment
- c) record consent, e.g. in relation to marketing preferences or disability or medical conditions, to make its Services/Equipment more accessible, to provide information in alternative formats and to ensure marketing materials are issued in line with preferences;
- d) provide, maintain and bill the Services/Equipment;
- e) provide access to online platforms;
- f) meet its legal and regulatory obligations and to comply with orders of the court or other bodies having lawful jurisdiction;
- g) authenticate Customers on Services/Equipment the Company provides.
- h) identify, manage and resolve Occurrences;
- i) assess and report on the creditworthiness of customers or potential customers;
- j) take any other action to the extent necessary to discharge an obligation pursuant to the Agreement; and
- k) receive, manage and resolve requests, queries, complaints and claims.

Categories of Personal Data

The Personal Data Processed shall concern the following categories of Personal Data only:

- a) account data e.g. caller line identification/telephone numbers, account number, device ID, IP address, service history and usage data;
- b) personal data e.g. name, title, address and circuit ID;