



General Terms and Conditions

1. DEFINITIONS

- 1.1 'Additional Term' means any term of this Agreement which is subsequent to the expiry of the Minimum Term, set out in the Order attached hereto.
- 1.2 'Agreement' means these General Terms and Conditions and any engrossed Order(s), Supplement(s) and Service Schedules, all of which, taken together constitute the agreement between the parties for the supply of Goods and Services.
- 1.3 'Applicable Law' means the laws of the jurisdiction set out in clause 17 hereof and any re-enactments thereof, that apply to the provision and receipt of the Services.
- 1.4 'Applicable Law' means:
 - 1.4.1 The laws of the jurisdiction set out in clause 17 hereof and any re-enactments thereof, that apply to the provision and receipt of the Services; and
 - 1.4.2 The laws of the jurisdictions under which the Callable's suppliers operate and any re-enactments thereof, that apply to the provision and receipt of the Services.
- 1.5 'Applicable Service' means a Service or part thereof for which the Callable makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.
- 1.6 'Commencement Date' means the date of commencement of this Agreement, as set out on the Order, which is the date of the Callable's acceptance of the Order.
- 1.7 'Contract' means the contract in subject for the Callable to sell and the Customer to buy Services and/or Equipment.
- 1.8 'Confidential Information' means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging to the other and concerning the business and affairs of the other, and in the case of the Callable, Customer Data and Customer Information.
- 1.9 'Customer Data' means data that is the property of the Customer.
- 1.10 'Customer Information' means information supplied by the Customer (including names, email addresses, Callable address, telephone numbers, usernames and passwords) which is required by the Callable to enable it to deliver the Services under the terms of this Agreement.
- 1.11 'Direct Customer' means a Customer who has directly placed an order for Goods and or Services with the Callable.
- 1.12 'Equipment' means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches.
- 1.13 'Fault' means any defect or failure in the Services.
- 1.14 'Force Majeure' means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action (except any industrial action relating to the Callable, its subcontractors or suppliers or any other failure in the Callable's supply chain), government restrictions, legislation, act of God or any other occurrence of a like nature.
- 1.15 'General Terms and Conditions' means these General Terms and Conditions
- 1.16 'Goods' means the goods that are the subject matter of the Contract sold by the Callable to the Customer, including Equipment and Software.

- 1.17 'Group' means in relation to either party, itself and each of its holding companies or subsidiaries for the time being and any subsidiary of any such holding Callable and the terms 'holding', 'Callable' and 'subsidiary' shall have the meanings given to them in the Companies Act 2006.
- 1.18 'Hour' means clock hour, which may fall outside of the Working Day.
- 1.19 'Indirect Customer' means a Customer who has placed an order for Goods and or Services with a Reseller of the Callable's Services.
- 1.20 'Infrastructure' means the Callable's servers and associated storage.
- 1.21 'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- 1.22 'Intellectual Property Rights' ('IPR') means the right to title to Intellectual Property;
- 1.23 'Loan Equipment' means Equipment that is loaned to the Customer by the Callable under the terms of this Agreement, to which the Callable shall retain title.
- 1.24 'Minimum Term' means the initial term of this Agreement, set out in the Order attached hereto.
- 1.25 'Order' means the order form attached hereto which sets out the Goods to be supplied and summary of Services to be delivered hereunder.
- 1.26 'Rented Equipment' means Goods that shall be rented to the Customer and to which the Callable shall retain title.
- 1.27 'Reseller' means an organisation which is authorised by the Callable to either re-sell the Callable's Services or sell such Services on the Callable's behalf.
- 1.28 'RFS Date' (Ready For Service Date) means the date from which the Services are available for use (at all sites) by the Customer, as notified by the Callable.
- 1.29 'Services' means services provided to the Customer by the Callable under the terms of this Agreement.
- 1.30 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Schedules.
- 1.31 'Service Credit' means credit applied to the Customer's account to be used as credit against future invoices.
- 1.32 'Service Limitations' means the service limitations set out in the relevant Supplement(s) and Service Schedule(s).
- 1.33 'Service Schedule' means the schedule which forms part of any service-specific Supplement attached hereto which sets out the detailed services to be provided and any applicable service levels.
- 1.34 'Software' means any software and associated documentation provided by the Callable to the Customer or its end users pursuant to this Agreement or used by the Callable to provide the Services, including any software which is embedded in the Equipment.
- 1.35 'Supplement' means service-specific supplementary terms and conditions and its associated Service Schedule.
- 1.36 'Tariff' means the document that lists prices and charges, as amended from time to time and made available by the Callable on request.
- 1.37 'Trouble Ticket' means the Customer's report of a Fault.
- 1.38 'Working Day' means 9.00am to 5.30pm Monday to Friday, excluding Bank and Public Holidays.
- 1.39 'Working Hour' means any hour within the Working Day.

2. THE PARTIES

The parties to this Agreement are (I) Callable Limited ('the Callable'), Callable Number 12875347, whose trading / correspondence address is 5 & 6 The Old Printworks, 20 Wharf Road, Eastbourne, East Sussex, BN21 3AW and (II) the Customer, whose name and place of business are set out on the Order Form.

3. GENERAL

- 3.1 These General Terms govern the overall relationship of the parties to this Agreement in relation to the Services provided by the Callable to the Customer. The Services to be provided to the Customer shall be as set out in each of the attached Supplement(s).
- 3.2 The Callable shall provide the Services to the Customer in the manner and on the terms of these General Terms and Conditions and in each relevant Supplement.
- 3.3 From time to time, the Customer may engage the Callable to provide additional Services under the terms of an additional Supplement and relevant Order, which shall be incorporated into and subject to the terms of this Agreement.
- 3.4 In the event of a conflict between the terms set out in the relevant Order, these General Terms and terms and conditions set out in the relevant Supplement, the following order of precedence shall apply:
 - 3.4.1 The terms of the Order;
 - 3.4.2 The terms of the Supplement and its attached Service Schedule;
 - 3.4.3 The terms of these General Terms.
- 3.5 In this Agreement:
 - 3.5.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive;
 - 3.5.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;
 - 3.5.3 References to a 'person' include a natural person, body corporate, unincorporated body of persons, individual, Callable, firm, government, state or agency of the state;
 - 3.5.4 References to the singular includes the plural and vice versa;
 - 3.5.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;
 - 3.5.6 A reference to a statute, statutory provision, order, regulation instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;
 - 3.5.7 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;
 - 3.5.8 A reference to the parties is a reference to the Callable and the Customer and a reference to a party is a reference to one of them;
 - 3.5.9 All periods expressed in days shall mean calendar days unless expressly stated otherwise;
 - 3.5.10 Copyright in supplier and other third-party product and service names is acknowledged.

4. COMMENCEMENT AND TERM

- 4.1 This Agreement shall be deemed to come into effect on the Commencement Date set out in the Order and shall run until the RFS Date and then from the RFS Date for the Minimum Term set out in the Order. Thereafter, this Agreement shall either continue to run or terminate in accordance with the terms of the applicable Supplement(s).
- 4.2 Additional Supplements shall come into force on the date specified in the relevant Order and shall continue until such time as specified in such Supplement, or until such Supplement is terminated earlier, in accordance with the terms set out therein or the terms of these General Terms and Conditions.
- 4.3 The termination of any particular Supplement shall not affect any other Supplement or these General Terms and Conditions save that on termination of the last remaining Supplement, the entire Agreement shall be deemed terminated.

5. THE CALLABLE'S OBLIGATIONS

During the term of this Agreement, and subject to the performance by the Customer of its obligations hereunder, the Callable shall:

- 5.1 At the commencement of this Agreement and any subsequent Supplement hereto provide a target for the RFS Date and make reasonable endeavours to provide the Services by such date; and

- 5.1.1 Immediately notify the Customer if it becomes aware of any subsequent change thereto.
 - 5.1.2 On the RFS Date, notify the Customer that the Services are available for use;
 - 5.1.3 Promptly respond to any and rectify any non-conformity in the Services that are raised by the Customer.
- 5.2 Provide the Services set out in the Supplement(s) and associated Service Schedule(s), in accordance with the relevant service levels and subject to any Service Limitations, including:
- 5.2.1 The delivery and if set out in the Order, installation of pre-configured Equipment at the Customer's site(s), set out in the Orders attached hereto;
 - 5.2.2 The provision of training in the use of the Equipment and Services as appropriate; and
 - 5.2.3 Making timely responses to Trouble Tickets raised by the Customer and using reasonable endeavours to repair any Fault in the Services the Callable provides according to the service level or targets set out in the relevant Service Schedule.
- 5.3 Warrant that it and its suppliers hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow the Callable, its suppliers and subcontractors to provide the Services In accordance with all Applicable Laws.
- 5.4 Being engaged by the Customer for its professional expertise, warrant that the Services shall be performed by competent staff, exercising a level of skill appropriate to their responsibilities.
- 5.5 Without prejudice to any other remedy to which the Customer may be entitled under the terms of this Agreement, promptly make good any failure to perform the Services arising from a failure of the Callable, its employees, subcontractors or suppliers at no charge to the Customer.
- 5.6 Without prejudice to its other obligations or responsibilities, ensure that when any of its obligations are performed on the Customer's premises all rules and instructions in force and published thereat are complied with.
- 5.7 Make reasonable endeavours to provide reasonable notice of any bona fide restriction which, for operational reasons the Callable may place on the Services.
- 5.8 Take full ownership of any Faults in the Services as properly reported to the Callable or of which it ought to be aware and maintain ownership until such Fault is resolved.
- 5.9 Work directly with its suppliers if such suppliers are involved in the resolution of particular Faults.
- 5.10 Recognise that the Services may be used in conjunction with services, software and equipment that may be provided and maintained by third parties (i.e. suppliers other than the Callable and its suppliers):
- 5.10.1 Whilst the Callable cannot assume responsibility for the repair of any third party Faults, it will however assist the Customer in the tracing and identification of problems incurred by the Customer which prove not directly attributable to the Services;
 - 5.10.2 Where it is appropriate, the Callable will also take reasonable steps to demonstrate to a third party supplier where the Fault lies; and
 - 5.10.3 If such Fault(s) are shown not to result from the Services, the Callable shall be entitled to charge the Customer for work carried out, at its prevailing rates.
- 5.11 Make reasonable endeavours to ensure that it provides sufficient resources to perform its obligations under the terms of this Agreement.

6. THE CUSTOMER'S OBLIGATIONS

During the term of this Agreement and subject to the performance by the Callable of its obligations hereunder, the Customer shall:

- 6.1 If installation or implementation charges are indicated on the Order to be estimates, undertake to pay the actual charge incurred for the installation/implementation of the Equipment or Services.
- 6.2 Promptly raise Trouble Tickets using the designated telephone number, email-address or web portal as notified to the Customer on commencement of the relevant Supplement or as updated from time to time.
- 6.3 Provide suitably qualified personnel for such times as may be reasonably required by the Callable:
 - 6.3.1 To promptly provide any information within the Customer's possession or control which the Callable may reasonably require in order to perform its obligations;
 - 6.3.2 To give the Callable information and assistance in identifying and correcting any malfunctions;

- 6.3.3 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by the Callable; and / or
- 6.3.4 To carry out diagnostic tests on the Equipment as requested by the Callable.
- 6.4 Allow the Callable, its subcontractors or agents proper access to the Customer's premises and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested; and
 - 6.4.1 Indemnify the Callable and its subcontractors for death or personal injury claims that arise out of the Customer's failure to comply with the provisions of this clause, save where such claim arises out of the negligence of the Callable or its subcontractors.
- 6.5 Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with the Callable's reasonable instructions.
- 6.6 If the Callable has to install Equipment at a third party's site, seek all necessary permissions prior to the Callable gaining access to the site.
- 6.7 Following the Callable's installation of Equipment at the Customer's site be responsible for replacing items of furniture and any necessary redecoration, provided that any such damage is minor, cosmetic and reasonably incurred and;
 - 6.7.1 If, prior to such installation the Callable becomes aware that damage will occur or re-decoration will be required, the Callable shall notify the Customer prior to carrying out the installation work.
- 6.8 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause the Callable or its suppliers to contravene any legislation, regulation or authorisation.
- 6.9 Indemnify the Callable against all claims made by third parties arising from Faults in the Service.
- 6.10 Indemnify the Callable against all claims for non-performance of services provided under agreements with third parties even if the Callable invoices the Customer for such services.
- 6.11 Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Customer and any other party for the supply of similar services.
- 6.12 Disclose to the Callable any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement.
- 6.13 In the event of a failure or interruption to the Services which has been investigated and or repaired by the Callable and found to be caused by the Customer or a third party (not connected with or under the control of the Callable), pay any reasonable charges levied by the Callable in respect of the work carried out.
- 6.14 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents:
 - 6.14.1 Necessary to allow it to use the Services;
 - 6.14.2 Necessary for any data, including documentation, software or data which may be supplied to the Callable for the purpose of assisting with the provision of the Services.
- 6.15 Save as provided by the Callable under the terms of this or another Agreement, provide all equipment necessary to enable access to the Services; and
 - 6.15.1 Make all reasonable measures to ensure that such equipment used in conjunction with the Services is free from viruses, worms, Trojan horses or any other malware.

7. CONFIDENTIALITY

- 7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of executing this Agreement and for the evaluation of future products and services. Neither party shall disclose Confidential Information to any other person without the owner's written consent except when it is deemed that such disclosure is required to execute this Agreement, in which case the disclosing party will obtain binding commitment from the receiving party to keep such information confidential.
- 7.2 Each of the parties to this Agreement shall, and procure that its staff, agents, regulators and subcontractors shall, keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:
 - 7.2.1 To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;

- 7.2.2 To the extent that it can be shown that the information was lawfully in its possession prior to the date of its disclosure by any other party;
 - 7.2.3 To the extent that the receiving party may have received the information from a third party without (bona fide) restriction as to disclosure;
 - 7.2.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;
 - 7.2.5 To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required;
 - 7.2.6 To the extent that it can be shown that such has been independently developed by the receiving party;
 - 7.2.7 The parties agree in writing that such need not be kept confidential.
- 7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such request.
- 7.4 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party.
- 7.5 Nothing in this clause shall prohibit the Callable from supplying the same or similar Goods or Services to other persons.
- 7.6 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Working Days to make its representations.
- 7.7 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.
- 7.8 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

8. DATA PROTECTION

- 8.1 In this Agreement the terms:
- 8.1.1 'Data Protection Legislation' means the Data Protection Act 2018, the General Data Protection Regulation (GDPR) EU2016/679, any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;
 - 8.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;
 - 8.1.3 'Sub-Processor' means a subcontractor or supplier to the Callable who Processes Customer Data on the Callable's behalf.
- 8.2 the Callable and the Customer each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary registrations and notifications and the Customer agrees:
- 8.2.1 To obtain and maintain all necessary consents (including the consents of all relevant Data Subjects) which are required by the Callable for the purpose of performance of this Agreement.
- 8.3 The parties to this Agreement agree that in relation to Customer Information the Callable shall be a Data Controller, not a joint Controller and, acting in the capacity of Data Controller shall:
- 8.3.1 Collect from the Customer, Process, use or share (with its suppliers or subcontractors, who may be acting in the capacity of Data Controller or Data Processor) Customer Information that the Callable shall determine the purpose of Processing to enable it to provide the Services, including:
 - a) Administration, tracking and fulfilment of Customer orders;
 - b) Management of Trouble Tickets;

- c) Administration of access to the Callable's support portal;
 - d) Administration of access to the Services;
 - e) Raising and issuing invoices;
 - f) Management of this Agreement, including issuing notices and providing management reporting.
- 8.3.2 Process the Customer Information in accordance with the applicable Data Protection Legislation and where applicable, the Callable's Privacy Policy;
- 8.3.3 Unless the Customer is an Indirect Customer, the Callable shall be entitled to use selected Customer Information and data pertaining to the Customer's use of the Services to advise appropriate members of the Customer's staff about additional products, services and offers.
- 8.3.4 If the Customer does not consent to the provisions of sub-clause 8.3.3, it shall be entitled to notify the Callable and forthwith upon receipt of such notice the Callable shall cease to advise the Customer about additional products, services and offers.
- 8.4 The parties agree that in relation to Personal Data contained within Customer Data, the Customer shall be the Data Controller and the Callable shall be the Data Processor:
- 8.4.1 For the avoidance of doubt, the Callable shall not be deemed to be a Data Processor in relation to any Customer Data that the Callable:
 - a) Does not store within its Infrastructure;
 - b) Does not transmit via the Services.
 - 8.4.2 If the Callable is deemed not to be a Processor, the provisions of sub-clauses 8.5 to 8.8 and 8.10 shall not be binding on either party.
- 8.5 The parties agree that under the terms of this Agreement:
- 8.5.1 The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by Applicable Law following the termination thereof;
 - 8.5.2 The nature of Processing is the transmission and storage of Customer Data as required to deliver the Services and the purpose of the Processing is the delivery of the Services to be delivered under the terms of this Agreement;
 - 8.5.3 Types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Customer and the Callable shall not be privy to such information;
 - 8.5.4 To the extent necessary to enable it to provide the Services, the Callable shall be entitled to and may transfer Customer Data and Customer Information outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of sub-clause 8.8.5;
 - 8.5.5 This Agreement forms inter alia the Customer's complete written instruction to Process Customer Data.
- 8.6 The Customer agrees that it shall be solely responsible for its compliance with its obligation under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure where such Customer Data is:
- 8.6.1 Created within the Callable's Infrastructure by the Customer using applications including email, desk-top applications, third party software and software developed by or for the Customer, including such being executed in managed desktop and Infrastructure as a service environments;
 - 8.6.2 Created within the Callable's Infrastructure either automatically or in response to third party user input using third party software or software developed by or for the Customer, including web-sites and web-services.
- 8.7 The Customer hereby agrees that certain Services the Callable provides under the terms of this Agreement will be provided to the Callable by one or more suppliers or subcontractors; that the Callable shall be entitled to change its suppliers or subcontractors at its sole discretion; and
- 8.7.1 In respect of Personal Data, the Callable's suppliers or subcontractors may act in the capacity of a Controller, Processor or Sub-Processor; and

- 8.7.2 For the avoidance of doubt, if the Callable appoints a Sub-Processor to Process Customer Data or Customer Information on its behalf, the Callable shall remain fully liable to the Customer for the performance of that Sub-Processor's data protection obligations; and
- 8.7.3 If the Callable elects to change a supplier or subcontractor who is acting in the capacity of Sub-Processor, it shall notify the Customer without undue delay and:
- a) If the Customer objects to the appointment of a Sub-Processor, the Customer shall notify the Callable within thirty days of the change and the Callable will address the objection in accordance with the process set out in clause 18 hereof; and
 - b) the Callable shall be entitled to use the Sub-Processor until the objection is resolved; and
 - c) If the Customer does not object within thirty days of notification of the changed Sub-Processor, such change will be deemed acceptable to the Customer.
- 8.8 The Customer, in its capacity of Data Controller hereby authorises the Callable, in its capacity of Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity of Sub-Processor to Process Customer Data for the purposes of performing its obligations under this agreement, subject to the Callable's, its suppliers' and subcontractor's compliance with the following conditions:
- 8.8.1 To restrict Processing of Customer Data to the transmission and storage thereof;
- 8.8.2 Notwithstanding the provisions of sub-clause 8.8.1, the Callable and / or its supplier(s) shall be entitled use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:
- a) Collating statistics for network planning purposes; and
 - b) Providing such information to government security agencies in response to specific requests.
- 8.8.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery services), abstract, summary or précis of the whole or any part of the Customer Data (save as set out in sub-clause 8.8.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.8.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.8.5 Not to transfer Customer Data outside of United Kingdom or the European Economic Area or to an International organisation either:
- a) Without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein; or
 - b) Unless such transfer is required under Applicable Law in which case Resolution IT shall, provided that it is not prevented from so doing under the Applicable Law, promptly notify the Customer of such transfer.
- 8.8.6 To promptly notify the Customer if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Data;
- 8.8.7 To undertake to implement appropriate processes and technology to ensure that:
- a) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
 - b) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
 - c) The Callable's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.
- 8.8.8 To undertake to assist the Customer with the Customer's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to the Callable by:
- a) Communicating to the Customer within five Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
 - b) In response to written instructions, assisting the Customer in providing Subject Access to the extent practicable;

- c) In the event of a security breach, which involves Customer Data, providing to the Customer details of the Customer Data that is involved in the breach;
- d) In the event of a security breach which involves Customer Information, notifying the Supervisory Authority and providing to the affected Data Subjects the details of the Customer Information that is involved in the breach;
- e) Providing responses to reasonable requests for technical and organisational information in relation to the Processing of Customer Data;
- f) On request making available to the Customer any of the Callable's relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation;
- g) Allow the Customer or an authorised representative of the Customer to audit the Callable's compliance with the Data Protection Legislation, the frequency of such audits to be not greater than once every twelve months.

And the Customer agrees to reimburse the Callable for its reasonable expenses incurred for any assistance provided under this sub-clause 8.8.8, save sub-clauses 8.8.8(c) and 8.8.8(d).

8.8.9 To undertake to on termination of this Agreement:

- a) On request, return to the Customer copies of all Customer Data;
- b) Delete all Customer Data that is held within the Callable's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law);
- c) Retain relevant Customer Information in line with its published privacy policy.

8.9 The Callable undertakes that it shall:

8.9.1 Ensure that access to Customer Data or Customer Information is limited to those employees, subcontractors or suppliers who need access to such to meet the Callable's obligations under this Agreement and that all employees, subcontractors and suppliers shall be placed under the same written, binding obligation of confidence;

8.9.2 Not disclose to any person Customer Data or Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Data or Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to the Callable;

8.9.3 If required to disclose Customer Information or Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable Law, the Callable shall prior to disclosure use reasonable endeavours to promptly notify the Customer of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.

8.10 The Customer agrees that in the event of novation of this Agreement or part thereof by the Callable's supplier, Customer Data and Customer Information, will be transferred to the supplier or its assignee.

8.11 The Callable will indemnify the Customer against any and all claims and proceedings made or brought against the Customer in respect of any breach of this clause 8 provided that such breach was due to the act or omission of the Callable, its employees, subcontractors or suppliers.

8.12 The Callable will on demand, deliver to the Customer all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Customer) which may include Personal Data.

8.13 The provisions of this clause 8 shall survive in the termination of this Agreement, howsoever occasioned, until such time as the Callable no longer retains any Customer Data or Customer Information.

9. CHARGES AND PAYMENT

9.1 In consideration of the provision of the Services, the Customer shall pay the charges in accordance with this Clause 9 (the 'Charges').

9.2 The Callable shall invoice the Customer according to the billing period set out in the Order and charges will be calculated using the details recorded by the Callable.

9.3 The Customer agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim), within fourteen days of the date of the Callable's invoice.

- 9.4 The Callable shall be entitled to offset any monies owed to the Customer against any monies owed to the Callable.
- 9.5 Invoices shall be deemed accepted by the Customer unless a written objection, which clearly identifies the reason for the dispute is received by the Callable within ten Working Days of the date of the invoice. If the Customer disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within fifteen Working Days of the receipt by the Callable of the Customer's letter, the dispute shall be escalated in accordance with the provisions of Clause 18 of this Agreement.
- 9.6 If the Customer fails to make any payment in respect of Goods or Services by the due date, the Callable shall be entitled to take one or more actions:
- 9.6.1 Suspend the provision of Services to the Customer until such time as the outstanding invoice(s) is/are paid;
- 9.6.2 Charge the Customer interest at the rate of 4% per annum above the prevailing Bank of England base rate, on any amount outstanding from the due date to the date of actual payment and such interest shall accrue on a daily basis;
- 9.6.3 Charge a late payment fee, as set out in the Tariff.
- 9.6.4 Terminate this Agreement;
- 9.6.5 Recover from the Customer damages for any costs or losses suffered by the Callable as a result of the Customer's failure to make payment.
- 9.7 If the Customer makes late payments more than twice in a year the Callable shall be entitled to demand that future payments are made by direct debit; and
- 9.7.1 If more than two direct debits are refused in a year, the Callable shall be entitled to terminate the Agreement.
- 9.8 If during the execution of this Agreement the Callable incurs reasonable expenses, the Callable shall be entitled to charge the Customer at cost for such expenses.
- 9.9 If the Callable is requested to provide Goods or Services in addition to those set out in the Order, the Callable shall charge the Customer for the provision of such Goods or Services at its prevailing rates.
- 9.10 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, if applicable.
- 9.11 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.
- 9.12 All elements of the Charges for Services shall be reviewed by the Callable to be effective at the end of the Minimum Term, and each subsequent anniversary thereof; and:
- 9.12.1 Any proposed changes in charges will be notified to the Customer in writing not less than ninety days prior to any anniversary.
- 9.13 Notwithstanding the provisions of clause 9.11, the Callable shall be entitled to increase its charges for any part of the Services if its suppliers increase their charges due to their increased costs:
- 9.13.1 At any time by providing a Direct Customer not less than twenty eight day's notice;
- 9.13.2 At any time by providing a Reseller whose customers are Indirect Customers of the Callable, not less than twenty eight day's notice.
- 9.14 The Callable shall be entitled to conduct credit checks in respect of the Customer from time to time.
- 9.15 The Callable shall be entitled to require that the Customer pays a deposit before the commencement of Services or during the term of this Agreement if the Callable becomes aware of an adverse change to the Customer's financial standing:
- 9.15.1 The Callable shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;
- 9.15.2 Deposits shall not attract interest.
- 9.16 The Callable shall be entitled to:
- 9.16.1 Correct a previously raised invoice for a period of twelve months following the date of the invoice; and

- 9.16.2 Raise an invoice for supply of the Services for a period of twelve months following the Customer's incurring the Charges; and
- 9.16.3 The provisions of this sub-clause 9.16 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.
- 9.17 If the Customer modifies the Order after the Order has been accepted by the Callable, the Callable shall be entitled to charge the Customer for all expenses incurred up to the date of the modification.
- 9.18 Time is of the essence with regard to payments due under the terms of this Agreement.

10. LIMITATION OF LIABILITY

- 10.1 This clause 10 sets out the Callable's entire financial liability (including any liability for the acts or omissions of its employees, subcontractors, agents and suppliers) to the Customer in respect of:
 - 10.1.1 Any breach of the express or implied terms of this Agreement by the Callable, its employees, subcontractors agents and suppliers;
 - 10.1.2 Any use made by the Customer of the Services;
 - 10.1.3 Any of the Services, their supply or failure or delay in the supply thereof;
 - 10.1.4 Any fraudulent misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement.

Whether arising in contract (including under any indemnity), tort (including negligence), under common law or statutory duty.

- 10.2 Nothing in this Agreement shall limit the Callable's liability:
 - 10.2.1 For death or personal injury caused by or arising from the negligence of the Callable, its employees, subcontractors agents or suppliers;
 - 10.2.2 For any damage incurred by the Customer resulting from fraudulent misrepresentation by the Callable, its employees, subcontractors agents or suppliers;
 - 10.2.3 For any breach by the Callable, its employees, subcontractors agents or suppliers of warranties as to title, quiet possession and freedom from encumbrance which may be implied by Section 2 of the Supply of Goods and Services Act 1982;
 - 10.2.4 For losses arising directly whether in contract, tort (including negligence and a breach of statutory duty) or otherwise from the Callable's breach of Clause 8 of this Agreement where such breach results in the damage to, loss of, illegal Processing of or disclosure of Personal Data;
 - 10.2.5 Any other liability than cannot be excluded or limited by law.
- 10.3 Notwithstanding any other provision of this Agreement but only subject to sub-clause 10.2, the Callable's maximum aggregate liability in one calendar year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation restitution or otherwise for any direct loss or damage howsoever caused shall be limited to:
 - 10.3.1 In relation to direct loss of or physical damage to tangible property, £1,000,000;
 - 10.3.2 In relation to direct losses reasonably incurred in any other cases not falling within sub-clause 10.2, the lesser of:
 - a) The total amount of the charges (including VAT) collected by the Callable in relation to the Services in the twelve month period prior to the date of the event which gave cause to the claim;
 - b) Twenty thousand pounds.

In respect of any one event or series of connected events, PROVIDED THAT before any such claim is made the Callable is given reasonable opportunity to make good the breach giving rise to such claim.

- 10.4 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.
- 10.5 Subject to any express terms and conditions of this Agreement to the contrary, the Callable shall not be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for:

- 10.5.1 Any direct or indirect loss of Production, time, goodwill, reputation, use, opportunity, revenue, profit, contracts, business, expenditure or anticipated savings;
- 10.5.2 Any loss or corruption of data or information;
- 10.5.3 Losses incurred by third parties;
- 10.5.4 Any indirect, special loss or damage;
- 10.5.5 Any purely economic losses or punitive damages;
- 10.5.6 Any loss or damage that could not be reasonably foreseen.

And the Customer hereby waives and releases any claims it might otherwise have to be compensated in respect of such losses (without limitation), even if the Callable has been advised of the possibility of such loss or damages.

- 10.6 The Callable shall not in any event have any liability for non-provision in the provision of Services which:
 - 10.6.1 Can be reasonably attributed to the acts or omissions of the Customer (including fraud), its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to the Callable;
 - 10.6.2 Can be reasonably attributed to the un-serviceability, un-suitability, mis-configuration or misuse of the Customer's equipment which is attached to the Services and is under the control of the Customer;
 - 10.6.3 Arises from or is a consequence of use of the Callable's Services other than in accordance with the express terms of this Agreement;
 - 10.6.4 Occurs during any period during which the Services have been suspended by the Callable in accordance with clause 12.
- 10.7 The Callable shall not in any event have any liability for non-provision of services arising from a delay to the RFS Date, howsoever caused.
- 10.8 The Customer acknowledges and agrees that data transmitted over technology including the public internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that the Callable shall not be liable for any losses the Customer may incur resulting from the interception, corruption or loss of such data, and:
 - 10.8.1 The Customer shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and
 - 10.8.2 The Customer shall be responsible for adopting such security measures as are appropriate to protect the Customer's systems.
- 10.9 The Customer acknowledges and agrees that:
 - 10.9.1 The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
 - 10.9.2 The Callable shall not be liable to the Customer in respect of any fraud or otherwise illegal activity perpetrated by the Customer, its employees, agents and subcontractors, nor any third party howsoever occurring;
 - 10.9.3 The Callable shall not be liable for any losses incurred by the Customer or any third party arising out of the Customer's breach of clause 8 of this Agreement;
 - 10.9.4 The Customer shall be liable for all losses incurred by the Callable arising directly from the Customers breach of clause 8 of this Agreement;
 - 10.9.5 The Customer agrees that the Callable shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services, whether with or without the permission of the Customer;
 - 10.9.6 Nothing in this clause 10 excludes or limits the Customer's liability to pay the charges due under the terms of this Agreement;
 - 10.9.7 The Callable shall not be liable for any losses, costs or damages whatsoever under the terms of this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.

- 10.10 If any exclusion in clause 10.5 is held to be invalid or any reason the Callable's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in clause 10.3.2.
- 10.11 The Customer agrees and accepts that the express obligations and warranties made by the Callable in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality, performance and care and skill used in its provision.
- 10.12 The Customer acknowledges that the Callable's obligations and liabilities are exhaustively defined in this Agreement.
- 10.13 The provisions of this clause 10 shall survive the termination of this Agreement, howsoever occasioned for a period of twelve months.

11. TERMINATION

- 11.1 This Agreement may be terminated (without prejudice to the terminating party's other rights and remedies) by written notice to the other party:
- 11.1.1 Forthwith by the Callable if the Callable's invoice remains unpaid two Working Days after receipt of written notice from the Callable to do so;
 - 11.1.2 Forthwith by the Callable if that two consecutive direct debit requests are rejected;
 - 11.1.3 Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same; or
 - 11.1.4 Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
 - 11.1.5 Forthwith by the Callable in advance of the supply of Services under the terms of this Agreement if the Callable's supplier declines to accept the Callable's order for the supply of Services;
 - 11.1.6 Forthwith by either party if the Callable ceases to be authorised by a competent authority to provide the Services;
 - 11.1.7 Forthwith by either party if the other party ceases to trade;
 - 11.1.8 Forthwith by either party if the other party commits a breach which cannot be remedied;
 - 11.1.9 Forthwith by either party if the other party is repeatedly in material breach of this Agreement;
 - 11.1.10 Forthwith if a right of termination arises in the event of Force Majeure;
 - 11.1.11 In accordance with any additional terms of the attached Supplement(s).
- 11.2 On termination of this Agreement, the Customer shall forthwith return all Rental Equipment and Loan Equipment to the Callable and shall pay all Charges and any applicable Cancellation Charges to the Callable.
- 11.3 If any Equipment that is the Callable's property is not returned to the Callable within fourteen days of the date of termination, the Callable shall be entitled to:
- 11.3.1 Enter into the Customer's premises to recover the property and charge the Customer any costs reasonably incurred; or
 - 11.3.2 Charge the Customer for the full retail price of the property as at the Commencement Date.
- 11.4 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

12. SUSPENSION OF SERVICES

- 12.1 the Callable shall be entitled to suspend the provision of the Services in whole or part, without notice (save as where it is reasonably possible to provide prior written notice) or liability to the Customer if:
 - 12.1.1 In the Callable's reasonable opinion, the Services are being used for activities that are in breach of any acceptable use clause contained in any supplemental terms and conditions attached hereto or any other fraudulent, illegal or wrongful activity, knowingly or otherwise, by the Customer;
 - 12.1.2 In the Callable's reasonable opinion, the Customer is in material breach of any other provision of this Agreement;
 - 12.1.3 Payments are unpaid within thirty days of the due date;
 - 12.1.4 The Callable is instructed to do so by Government or any other competent authority;
 - 12.1.5 There are critical operational reasons or emergency;
 - 12.1.6 Planned or emergency work is required to systems that underpin the delivery of the Services;
 - 12.1.7 Any consent, wayleave or authority required by the Callable or its supplier is withdrawn, revoked or otherwise ceases to have effect.
- 12.2 In the event of suspension of Services under the terms of sub-clause 12.1:
 - 12.2.1 Services shall be restored by the Callable during Working Hours when the situation which has given cause to the suspension is resolved by the Customer and the Callable shall be entitled to charge a reinstatement fee as set out in the Tariff;
 - 12.2.2 Suspension of any part of the Services under the terms of this Agreement shall not constitute a termination and the Customer shall continue to pay all of the Callable's charges in relation to this Agreement during the period of suspension of Services;
 - 12.2.3 If the Customer fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, the Callable shall be entitled to terminate the Agreement under the terms of clause 11;
 - 12.2.4 The Callable shall not be liable for any costs, expenses or losses or other liabilities incurred by the Customer as a result of suspension of the Services.
- 12.3 The Callable is not obliged to suspend services or give notice of suspension prior to exercising its right to terminate this Agreement.

13. PERFORMANCE AND SERVICE CREDITS

- 13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement which is set out in the Service Schedule(s) attached to the relevant Supplement(s).
- 13.2 The Callable commits to ensure that the Applicable Services meet the performance targets set out in the service level agreement.
- 13.3 If the Callable does not meet its commitment in relation to an Applicable Service, the Customer shall be entitled to claim a Service Credit as set out in the relevant Service Schedule.
- 13.4 To make a claim for Service Credit, the Customer must notify the Callable within three days of the beginning of the incident that gives rise to the claim.
- 13.5 The notification of the claim must include:
 - 13.5.1 Customer name and contact;
 - 13.5.2 The start and end time for each incident for which a claim is being made;
 - 13.5.3 Clear and accurate evidence to enable the Callable to confirm the claim for Service Credit.
- 13.6 Failure to provide the required information as set out in this clause shall invalidate the claim for Service Credit.
- 13.7 In the event of a claim for a Service Credit, the Callable shall review such claim and determine at its sole discretion whether or not a Service Credit is due.
- 13.8 The Customer acknowledges and accepts that:
 - 13.8.1 Service levels set out in the Service Schedule(s) are conditional upon the Customer allowing the Callable unrestricted 24/7 access to its site(s) without prior notice in the event of a malfunction or other failure of the Services;

- 13.8.2 For certain performance measures, Service Credit eligibility will be based solely on the Callable's own measures of core performance of the Services (acting reasonably and in good faith);
 - 13.8.3 It is technically impractical to provide the Services free from Faults or interruption and the Callable does not give any undertaking to do so. The Customer therefore agrees that Service Credits set out for any Applicable Service shall constitute the Customer's sole financial remedy for the Callable's failure to meet any service level targets set out in the Service Schedule(s), and that such financial remedy is full and final satisfaction of the Callable's liability for such failure;
 - 13.8.4 Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target. For the avoidance of doubt, Service Credits shall not be payable for the consequential lack of availability or otherwise of Service Components that are reliant upon the serviceability of the Service Component that has failed to meet its performance target.
- 13.9 If a Service Credit is deemed due, such shall be applied to the Customer's account within thirty days of the date of the Callable's determination.
- 13.10 The payment of Service Credits is subject to the following limitations:
- 13.10.1 The Customer's entitlement to claim Service Credits as provided in this Agreement shall be the Customer's sole and exclusive remedy for any failure by the Callable to provide the Applicable Services according to the Schedule;
 - 13.10.2 Service Credits are non-refundable and non-transferrable and may only be used as credit against future invoices due in respect of the Customer's usage of the Services under the terms of this Agreement;
 - 13.10.3 The aggregate monetary amount of credits payable by the Callable in any month shall not exceed 20% of the recurring monthly charge (excluding VAT and usage-based charges).
- 13.11 Service Credits shall not apply following any failure of the Callable to provide the Applicable Services due to:
- 13.11.1 Incidents outside of the Callable's reasonable control including force majeure events; or
 - 13.11.2 Law enforcement activity; or
 - 13.11.3 Actions of a third party including denial of service attacks; or
 - 13.11.4 Suspension or termination of Services by the Callable under the Terms of this Agreement; or
 - 13.11.5 Any action or inaction whatsoever by the Customer, its employees, agents or subcontractors in connection with the Applicable Services.
 - 13.11.6 Any incident, action or event that occurs before the RFS Date.
- 13.12 The Customer shall be ineligible to claim for Service Credits under the terms of this Agreement if:
- 13.12.1 The Customer is in breach of any part of the Agreement; or
 - 13.12.2 The Services have been suspended or terminated by the Callable under the Terms of this Agreement; or
 - 13.12.3 Invoices issued by the Callable are due to be paid but remain outstanding.
 - 13.12.4 Notice to terminate this Agreement has been served by either party and acknowledged by the other; or
 - 13.12.5 The Customer has been served notice to remedy a breach of these terms and conditions and such remedy remains un-discharged.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property in the Equipment and associated documentation owned or used by the Callable, its subcontractors, agents or suppliers ('Owners') in the performance of this Agreement shall be and will remain vested in the Owners except as expressly provided in this Agreement, the Customer shall not acquire any rights, title or interest in or to any Intellectual Property owned by the Owners. To the extent to which it is entitled, the Callable grants to the Customer a royalty-free, non-exclusive, revocable, non-transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.

- 14.2 The Callable shall if applicable acquire for the Customer (a) non-exclusive, non-transferable, royalty-free licence(s) to use the Software and associated documentation set out in the Schedule attached to the relevant Supplement(s) for the purposes of using the Services for the term of the relevant Supplement(s).
- 14.3 The Customer hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted by the Callable in accordance with Section 50B of the Copyright Designs and Patents Act 1988, the Customer hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.
- 14.4 In the event of the Customer's breach of sub-clause 14.3, the Customer undertakes to:
- 14.4.1 Immediately notify the Callable of the breach;
- 14.4.2 Take reasonable steps to remedy the breach within forty eight hours of having become aware of the breach.
- 14.5 All Intellectual Property owned or used by the Customer and/or its subcontractors, agents and suppliers ('Customer Owners') pursuant to this Agreement shall be and will remain vested in Customer Owners and except as expressly provided in this Agreement, the Callable shall not acquire any rights, title or interest in or to any Intellectual Property owned by Customer Owners.
- 14.6 The Customer shall indemnify the Callable in respect of all losses, damages, costs or expenses and other liabilities (including reasonable legal fees) arising from any and all claims from third parties relating to the Customer's infringement of or non-compliance with any third party licences or other end user terms applicable to the use of any Software, images or other data, either by the Customer and/or its employees, subcontractors, agents or customers. The Callable shall:
- 14.6.1 If the Callable, rather than the Customer becomes aware of such a claim, promptly notify the Customer in writing of any such claim with full details of the claim;
- 14.6.2 Promptly provide the Customer and its advisers with all information and assistance that they may reasonable require, at the Customer's cost;
- 14.6.3 Allow the Customer (at its request) to use its chosen advisers and to have the exclusive conduct of all negotiations and proceedings (to include for the recovery of costs of the Callable) and provide the Customer with such reasonable assistance required by the Customer, regarding the claim; and
- 14.6.4 Not, without the consent of the Customer, make an admission relating to the claim.
- 14.6.5 Promptly take any action and give any information and assistance as the Customer may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.
- 14.7 the Callable shall indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including reasonable legal fees) arising from an Intellectual Property rights claim ('IPR Claim') by the Owner of Equipment or Software supplied by the Callable under the terms of this Agreement, provided that the Customer shall:
- 14.7.1 If the Customer, rather than the Callable becomes aware of such a claim, promptly notify the Callable in writing of any IPR Claim with full details of the IPR Claim;
- 14.7.2 Promptly provide the Callable and its advisors reasonable access to premises and personnel and to all relevant assets, accounts, documents and records that it possesses or controls (with the right to take copies) for the purposes of investigating the matter and enabling the Callable to take the action referred to in this sub-clause 14.7;
- 14.7.3 Allow the Callable to use its chosen advisors and to have the exclusive conduct of all negotiations and proceedings (to include for the recovery of costs of the Customer) and provide the Callable with such reasonable assistance required by the Callable, regarding the IPR Claim;
- 14.7.4 Not, without the consent of the Callable, make any admission relating to the IPR Claim;
- 14.7.5 Promptly take any action and give any information and assistance as the Callable may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.
- 14.8 In the event of an IPR Claim arising from Equipment or Software provided by the Callable to facilitate the use of the Services, the Customer acknowledges that the Callable may, at its discretion and cost, licence to the Customer or procure a licence to the Customer of an alternative item and/or modify or procure the

modification of the infringing item in each case provided that (i) this resolves the original IPR Claim, (ii) it does not give rise to another IPR Claim; (iii) is of no extra cost to the Customer and (iv) it does not materially affect the performance of the Services.

- 14.9 The provisions of clauses 14.6 and 14.7 shall not apply to the extent that such a claim is due to the negligence of that party against whom the claim has been made, or its customers or their respective officers, employees or agents.
- 14.10 Both the Customer and the Callable shall have a duty to mitigate any loss which it may incur as a result of a matter giving rise to a right of indemnification under this clause.
- 14.11 The Callable acknowledges that Customer Data is and shall remain the property of the Customer and the Customer reserves all IPRs which may at any time subsist in the Customer Data. To the extent that any Customer Data vest in the Callable by operation of law, such IPRs shall be assigned by the Callable to the Customer immediately on the creation of such Customer Data.
- 14.12 The Callable shall:
- 14.12.1 Not alter, store, copy, disclose or use Customer Data other than in strict accordance with this Agreement;
 - 14.12.2 Preserve, so far as possible, the integrity of Customer Data and prevent any loss, disclosure, theft, manipulation or interception of Customer Data and shall advise the Customer immediately in the event thereof.
- 14.13 To the extent that any Customer Data is held or Processed by the Callable, the Callable shall return such Customer Data to the Customer as may be requested from time to time.
- 14.14 The Customer shall indemnify and hold the Callable harmless against all IPR claims, costs, losses and damages arising out of IPR infringement in respect of Customer Data.

15. MISCELLANEOUS

- 15.1 The Callable may recommend that another party carries out work, supplies goods, software or services to the Customer. The Customer shall not be obliged to engage any such recommended party and shall not be prejudiced in any way should it choose not to do so. However, if it does engage any such recommended party, the Callable does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.
- 15.2 In the case where the Callable provides goods or software originally manufactured or developed by third parties it passes on statements or representations in good faith but doesn't verify them or guarantee their accuracy.
- 15.3 the Callable cannot accept responsibility for any statements or representations unless such are made in writing.
- 15.4 If Goods or Services are provided to the Customer at a reduced or no charge for a trial period, the Callable shall commence charging for the provision of the Goods and/or Services at the price agreed between the parties prior to the commencement of the trial period, from the end of the trial period unless the Customer serves thirty day's notice to terminate this Agreement at the end of the trial period; and
- 15.4.1 The Minimum Term shall be deemed to commence at the end of the trial period.
- 15.5 The signing by the Callable of any of the Customer's documentation shall not imply any modification to this Agreement.
- 15.6 For the purpose of this Agreement, communications made between the Callable and the Customer by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 26.
- 15.7 The Callable shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 15.8 If the Callable sells, loans or rents Equipment to the Customer to enable the delivery of the Services, the Equipment will be provided under the terms of the Callable's Supplemental terms for the Sale, Rental or Loan of Equipment, attached hereto.
- 15.9 The parties agree to comply with the provisions of the Bribery Act 2010; and
- 15.9.1 Maintain such processes and procedures to ensure compliance therewith; and

15.9.2 Promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.

16. THIRD PARTY RIGHTS

Save as expressly stated, these terms and conditions do not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act of 1999 and it is not the intention of the parties to this Agreement to confer such rights.

17. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts and if this Agreement is translated into any other language, the English Language version shall prevail.

18. DISPUTE RESOLUTION

18.1 If the Customer is not satisfied with any aspect of the delivery of the Services, in the first instance the Customer should make a complaint to the Callable using the procedure set out in the Schedule to the applicable Supplement.

18.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

18.3 Except in the case of disputes arising from non-payment of invoices which are deemed accepted by the Customer:

18.3.1 If the dispute is not resolved through negotiation within ten Working Days, the parties will attempt in good faith to resolve the dispute through mediation by the Communications Ombudsman

18.3.2 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 18.3 until they have attempted to settle said dispute by mediation and that mediation has terminated;

18.3.3 The fees and the costs of such mediation or arbitration shall be borne equally by the parties.

18.4 Nothing in this clause 18 shall prevent either party from:

18.4.1 Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;

18.4.2 Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

19. FORCE MAJEURE

19.1 Subject always to the provisions of this clause 19, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.

19.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:

19.2.1 Notify the other in writing as soon as reasonably possible and in any case within five Working Days of the onset of such Force Majeure, specifying its nature and extent of the circumstances;

19.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and

19.2.3 Notify the other party as soon as the Force Majeure event has ceased to affect performance of the agreement and resume performance of its obligations as soon as reasonably possible..

19.3 If either party is unable to perform its obligations due to Force Majeure, the other party shall be released to an equivalent extent from its obligations relating thereto, including making payment for affected Services.

- 19.4 If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving notice in writing, in which case neither party shall have any liability to the other except rights and liabilities which accrued prior to such termination shall continue to subsist.
- 19.5 For the avoidance of doubt:
- 19.5.1 the Callable acknowledges and agrees that any default of any of its subcontractors, suppliers or agents shall not constitute a Force Majeure event and such default shall not excuse the Callable from the performance of its obligations under this Agreement; and
- 19.5.2 During the period of any Force Majeure event, the Customer shall be entitled to engage an alternative supplier to provide a replacement to the Services.

20. ADVERTISING

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly, in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

21. ASSIGNMENT

- 21.1 The Callable shall be entitled to subcontract all or any part of the Services on notice to, but not requiring the consent of, the Customer. Such assignment will not relieve the Callable of any of its obligations under this Agreement.
- 21.2 The Callable shall be entitled to:
- 21.2.1 Assign the benefit of this Agreement, such assignment shall not relieve the Callable of any of its obligations under this Agreement; or
- 21.2.2 Assign the benefit and burden of this Agreement to an affiliated body or third party in the event of a sale of all or substantially all of its assets on notice to, but not requiring the consent of, the Customer.
- 21.2.3 Notwithstanding the provisions of Clauses 7 and 8, disclose to a proposed assignee any information in its possession that relates to this Agreement for the purposes of the proposed assignment.
- 21.3 The Customer shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of the Callable (such consent not to be unreasonably withheld or delayed).
- 21.4 Either party shall be entitled to assign the benefit or burden of this Agreement to members of its Group.

22. VARIATION

- 22.1 If the Customer requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made in writing and will not be deemed accepted until acknowledged and agreed in writing by the Callable; and
- 22.1.1 If the Callable fails to accept such change, such failure shall not affect the provision of any foregoing Services.
- 22.2 Subject to the provisions of sub-clause 22.3, the Callable shall be entitled to change the terms of this Agreement by giving the Customer not less than one month's notice, in order to:
- 22.2.1 Comply with legal or regulatory obligations;
- 22.2.2 Maintain the security and integrity of the Services;
- 22.2.3 Improve or clarify the Agreement;
- 22.2.4 Reflect contractual changes imposed by its suppliers;
- 22.2.5 Protect the use of Intellectual Property;
- 22.2.6 Add, change or withdraw Services or service levels.
- 22.3 If the Callable makes any change to the terms of this Agreement other than those listed in clause 22.2 and such change results in material adverse effect, which for the avoidance of doubt does not include price changes the Customer shall be entitled to terminate this Agreement by giving one month's notice without

incurring Cancellation Charges, PROVIDED THAT such notice is given within fourteen days of the variation being made; and

22.3.1 If notice is not given by the Customer within fourteen days of the notification of the variation, the variation shall be deemed agreed by both parties.

22.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

22.5 No modification, amendment or other variation to this Agreement made by the Customer shall be valid unless agreed in writing and signed by both parties.

23. STAFF

23.1 Each party agrees not to approach employees or subcontractors of the other in order to entice them to join the other in a role that relates directly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this clause 23.1 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other a sum equal to the annual salary or otherwise of the employee or subcontractor concerned except where that employee has responded to a bona fide advertisement or other offer published or made to the general public.

23.2 Nothing in this Agreement or the Callable's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, joint venture or any mutual obligation between the parties other than set out in this Agreement.

23.3 The Callable shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.

23.4 The parties consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') will not apply on the commencement or cessation (in whole or in part) of the provision of Services by the Callable; and

23.4.1 Both parties agree to indemnify the other and keep the other indemnified against any liabilities arising out of or in connection with any claim or decision by a Court or Tribunal that the contract of employment of any staff has transferred to the other under the TUPE Regulations or otherwise as a result of the parties entering into this Agreement, including (without limitation), any liability for failure to inform and consult under the TUPE Regulations;

23.4.2 If any contract of employment of any staff of either party has effect (or is argued to have effect) as if originally made between one party and staff of the other as a result of the TUPE Regulations or otherwise at any time, then the affected party shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the other party agrees to indemnify the affected party against any liabilities arising out of such termination and against any sum payable to or in respect of such staff prior to termination of employment.

23.5 The indemnities in sub-clauses 23.4.1 and 23.4.2 are not subject to the limitation of liability set out in sub-clause 10.3.2.

24. WAIVER

24.1 No forbearance, delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them.

24.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.

24.3 Any waiver to be effected must be agreed in writing and shall:

24.3.1 Be confined to the specific circumstances in which it is given;

24.3.2 Not affect any other enforcement of the same or any other right;

24.3.3 Unless expressly stated, be revocable at any time (in writing).

25. SEVERABILITY

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

26. NOTICES

- 26.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the Callable secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Working Days of sending.
- 26.2 Notices shall not be deemed validly served if sent only by email or fax
- 26.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (including notices to terminate) may be communicated by fax or email.
- 26.4 Either party may at any time notify the other of a change of address or person for the purpose of the serving of notices under the terms of this Agreement, subject to the terms of this clause 26.

27. ENTIRE AGREEMENT

- 27.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and terms and conditions attached to the Customer's purchase order.
- 27.2 The parties acknowledge and agree that:
 - 27.2.1 The parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, promise, inducement or any other assurance not set forth herein;
 - 27.2.2 Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein;
 - 27.2.3 The Callable and the Customer have the power to enter into, exercise its rights under and perform and comply with its obligations under the terms of this Agreement.
- 27.3 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by the Callable shall not form part of this Agreement.
- 27.4 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.