

## General Terms and Conditions

### 1. DEFINITIONS

- 1.1 'Schedules' means any schedules attached hereto.
- 1.2 'Goods' means the goods that are the subject matter of the Contract sold by the Company to the Customer.
- 1.3 'Rented Equipment' means Goods that shall be rented to the Customer and to which the Company shall retain title.
- 1.4 'Loan Equipment' means Equipment that is loaned to the Customer by the Company under the terms of this Agreement, to which the Company shall retain title.
- 1.5 'Services' means services provided to the Customer by the Company under the terms of this Agreement.
- 1.6 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Schedules.
- 1.7 'Order' means the order form attached hereto which sets out the Goods to be supplied and summary of Services to be delivered hereunder.
- 1.8 'Service Schedule' means the schedule attached hereto which sets out the detailed services to be provided and any applicable service levels.
- 1.9 'Supplement' means service-specific supplementary terms and conditions and its associated Service Schedule.
- 1.10 'Agreement' means these General Terms and Conditions and any engrossed Order(s), Supplement(s) and Schedules, all of which, taken together constitute the agreement between the parties for the supply of Goods and Services.
- 1.11 'General Terms' means these General Terms and Conditions
- 1.12 'Tariff' means the document that lists prices and charges, as amended from time to time and made available by the Company on request.
- 1.13 '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.
- 1.14 'Working Day' means 09.00am to 5.00pm Monday to Friday, excluding Bank and Public Holidays.
- 1.15 'Working Hour' means any hour within the Working Day.
- 1.16 'Hour' means clock hour, which may fall outside of the Working Day.
- 1.17 'Equipment' means telephony and computational hardware, including telephone handsets, workstations, servers, routers, CCTV equipment and switches.
- 1.18 'Software' means any software and associated documentation provided by the Company to the Customer or its End Users pursuant to this Agreement or used by the Company to provide the Services, including any software in the Company Equipment.
- 1.19 'Minimum Term' means the minimum period of 36 Months from the connection date or such other as is prescribed for the relevant service or as is otherwise detailed in the agreement.
- 1.20 '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.
- 1.21 'Applicable Service' means a Service or part thereof for which the Company makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.
- 1.22 'Service Credit' means credit applied to the Customer's account to be used as credit against future invoices.

- 1.23 'RFS Date' (Ready For Service Date) means the date from which the Services are available for use by the Customer, as notified by the Company.
- 1.24 '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.
- 1.25 Early termination charges – means any compensatory charges payable by the customer to the Supplier on termination of this agreement in whole or part, as set out in the Order, or if not specified, then an amount equal to 100% of the recurring charges for all remaining months, one off charges, and or installation charges, and an average of the usage charges invoiced by the supplier over the previous six months multiplied by the remaining months of the minimum term.
- 1.26 Connection Date – means the date of the connection of the Service(s). The date upon which the customer agrees to the terms of this contract.

## **2. THE PARTIES**

The parties to this Agreement are (I) Voice IP Comms Ltd ('the Company'), whose registered office is at 2 Allum Brook Barns, London Road, Holmes chapel Cheshire CW4 8AX F and (II) the Customer, whose name and place of business are set out on the Order.

## **3. GENERAL**

In this Agreement:

- 3.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive.
- 3.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom.
- 3.3 References to a 'person' include an individual, a body corporate and an unincorporated body of persons.
- 3.4 References to the singular includes the plural and vice versa.
- 3.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement.
- 3.6 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.
- 3.7 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body.
- 3.8 In the event of a conflict between the terms set out in each of the Order, these General Terms and Conditions and terms and conditions set out in the Supplement(s), the following order of precedence shall apply:
  - 3.8.1 The terms in the Order;
  - 3.8.2 The terms in the Supplement(s) and attached Schedules;
  - 3.8.3 The terms of these General Terms and Conditions.

#### **4. HOW LONG THIS AGREEMENT LASTS AND WHEN CAN IT BE ENDED**

- 4.1 The obligations for each of the parties start on the following dates
- 4.2 (a) The customer's obligations start on the connection date and will continue for the minimum term and thereafter for further periods each equivalent to the Minimum term until Terminated by either party giving to the other not less than 30 days' notice prior written notice but not greater than 60 days prior written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate. To transfer their services away from Voice IP Comms within 30 days following the expiry of the minimum term or the expiry of any subsequent period, this will be deemed as acceptance by the Customer of continuing to contract with Voice IP comms Ltd for a further period equivalent to the minimum term (unless Voice IP agrees otherwise).

#### **5. COMPANY'S OBLIGATIONS**

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

- 5.1 As soon as reasonably possible, notify the Customer when it becomes aware of the RFS Date or any subsequent change thereto.
- 5.2 Provide the Services set out in the Schedule(s), subject to any Service Limitations set out in the Order, including:
- 5.2.1 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 Provision of training in the use of the Equipment and Services as appropriate;
- 5.2.3 Responding to incident reports made by the Customer and making reasonable endeavours to repair any fault in the Services or faults directly caused by the Company, its employees, agents, subcontractors or suppliers, according to the service level or targets set out in the appropriate Service Schedule.
- 5.2.4 Taking all reasonable measures to ensure that any Software provided for use with or by the Services shall be free from malware including viruses, worms, and Trojan horses
- 5.3 Warrant that it and its suppliers hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow the Company to provide the Services and:
- 5.3.1 The Services shall be provided in compliance with all applicable legislative and regulatory requirements.
- 5.4 Being engaged by the Customer for its professional expertise, the Company warrants that the Services shall be performed by competent staff, exercising a reasonable level of skill appropriate to their responsibilities.
- 5.5 Undertake to make good any failure to perform the Services arising from a failure of the Company, its employees, subcontractors or suppliers at no charge to the Customer.
- 5.6 Without prejudice to its other obligations or responsibilities, shall 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 Provide reasonable notice of any bona fide restriction which, for operational reasons the Company may place on the Services.
- 5.8 Take full ownership of incidents properly reported to the Company and will maintain ownership until the incident is resolved.
- 5.9 Work directly with its suppliers in the event that such suppliers are involved in the resolution of particular incidents.
- 5.10 The Company recognises 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 Company and its suppliers):

- 5.10.1 Whilst the Company cannot assume responsibility for the repair of any third party faults, it will however assist the Customer in the tracing and identification of problems experienced by the Customer which prove not directly attributable to the Services;
- 5.10.2 Where it is appropriate, the Company will also take reasonable steps to demonstrate to a third party supplier where the fault lies;
- 5.10.3 In the event that such fault(s) are shown not to result from the Services, the Company shall be entitled to charge the Customer for work carried out, at its prevailing rates.
- 5.11 The Company will, at the commencement of this Agreement provide a target time-scale for the RFS Date and make reasonable endeavours to provide the Services by such date.
- 5.12 The Company shall make reasonable endeavours to ensure that it and its suppliers provide sufficient resources to perform their respective obligations under the terms of this Agreement.

## **6. CUSTOMER'S OBLIGATIONS**

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

- 6.1 On becoming aware of same, promptly report to the Company any defect or failure in the Services, using the designated telephone number, email-address or web portal as notified to the Customer on commencement of this Agreement.
- 6.2 Provide suitably qualified personnel for such times as may be reasonably required by the Company:
  - 6.2.1 To give the Company information and assistance in identifying and correcting any malfunctions;
  - 6.2.2 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by the Company;
  - 6.2.3 To carry out diagnostic tests on the Equipment and Services as requested by the Company;
  - 6.2.4 To promptly provide the Company with all information that may be reasonably required to enable the Company to provide the Services.
- 6.3 Allow the Company, its subcontractors and agent's proper access the Customer's premises and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested.
- 6.4 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 Company's reasonable instructions.
- 6.5 In the event that the Company has to install Equipment at a third party's site, the Customer shall seek all necessary permissions prior to the Company gaining access to the site.
- 6.6 Following the Company's installation of Equipment at the Customer's site, the Customer shall be responsible for replacing items of furniture and any necessary redecoration, save any property damage caused by the negligence of the Company, its sub-contractors or agents.
- 6.7 In the event that Equipment is loaned or rented to the Customer to enable the delivery of the Services, the Customer agrees:
  - 6.7.1 That title to the Loan Equipment or Rented Equipment shall at all times remain with the Company or its supplier;
  - 6.7.2 Not to move, modify, add to or interfere with the Loan Equipment or Rented Equipment, nor permit any third party to do the same;
  - 6.7.3 That all instructions relating to the Loan Equipment or Rented Equipment are complied with;
  - 6.7.4 That it shall be liable for any damage to or loss of the Loan Equipment or Rented Equipment;
  - 6.7.5 That the Loan Equipment or Rented Equipment is adequately insured and shall, if requested, provide to the Company evidence of such;

- 6.7.6 To allow the Company to modify, upgrade or replace Loan Equipment or Rented Equipment as reasonably requested by the Company;
- 6.7.7 That on termination of this Agreement, or at any other time when reasonably requested the Loan Equipment or Rented Equipment shall be returned to the Company.
- 6.8 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement.
- 6.9 Indemnify the Company against all claims made by third parties arising from faults in the Service.
- 6.10 Indemnify the Company against all claims for non-performance of services provided under agreements with third parties even if the Company 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 Company any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services
- 6.13 In the event of a failure or interruption to the Services which has been investigated and or repaired by the Company and found to be caused by the Customer or a third party, pay any charges levied by the Company 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 Company for the purpose of assisting with the provision of the Services.
- 6.15 Save as provided by the Company under the terms of this Agreement, provide all equipment necessary to enable access to the Services.

## **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 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 Company 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 by a third party 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 The Company acknowledges that it may have access to and may be entrusted with Personal Data (as defined in the 1998 Data Protection Act) in the provision of the Services.
- 8.2 The Company agrees that in its capacity of a Data Processor (as defined in the 1998 Data Protection Act) it will not (except as a necessary part of the performance of its obligations in connection with the provision of the Services):
  - 8.2.1 Retain any copy, abstract, summary or précis of the whole or any part of such Personal Data;
  - 8.2.2 Disclose to any person such Personal Data other than to its suppliers, agents, subcontractors or employees who are placed under the same obligation of confidence and who need access to such Personal Data to facilitate proper performance of their contractual obligations to the Company.
- 8.3 The Company agrees that in its capacity of a Data Controller (as defined in the 1998 Data Protection Act) it will not (except as a necessary part of the performance of its obligations in connection with the provision of the Services) disclose to any person such Personal Data other than to its agents, subcontractors or employees who are placed under the same obligation of confidence and who need access to such Personal Data to facilitate proper performance of their contractual obligations to the Company.
- 8.4 The Company will undertake to implement appropriate processes and technology to protect Personal Data against accidental destruction or disclosure; and
  - 8.4.1 To promptly notify the Customer if it becomes aware of any accidental destruction, disclosure or illegal processing of the Personal Data
- 8.5 The Company shall be entitled, in its capacity of a Data Controller to use such Personal Data and data pertaining to the Customer's use of the Services to advise the Customer about additional products, services and offers.
- 8.6 In the event that the Customer does not consent to the provisions of sub-clause 8.5, the Customer shall be entitled to notify the Company and forthwith upon receipt of such notice the Company shall cease to use such Personal Data and data pertaining to the Customer's use of the Services to advise the Customer about additional products, services and offers.
- 8.7 The Company will indemnify the Customer against any and all claims and proceedings made or brought against the Customer in respect of any alleged breach of this clause provided that such breach was due to the act or omission of the Company, its agents, subcontractors or employees.

- 8.8 The Company will on demand, deliver to the Customer all documents that may be in its possession or in the possession of its agents, subcontractors or employees (including documents prepared by the Customer) which may include Personal Data.
- 8.9 The provisions of this clause 8 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

## **9. CHARGES AND PAYMENT**

In consideration of the provision of the Services, the Customer shall pay the charges in accordance with this Clause 9.

- 9.1 The Company 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 Company.
- 9.2 Payments shall be paid by the Customer within thirty days (or as otherwise set out on the Order) of the date of the Company's invoice.
- 9.3 The Customer agrees to pay the Company the whole of the amount due without any withholding, deduction, set off or counter-claim.
- 9.4 The Company shall be entitled to offset any monies owed to the Customer against any monies owed to the Company.
- 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 Company within ten Working Days of the date of the invoice. In the event that 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 Company of the Customer's letter, the dispute shall be escalated in accordance with the provisions of Clause 17 of this Agreement.
- 9.6 In the event that the Customer fails to make any payment in respect of Goods or Services by the due date, the Company 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% above the prevailing Yorkshire Building Society base rate, on any amount outstanding from the due date to the date of actual payment. Interest shall be applied on a daily basis;
- 9.6.3 Terminate this Agreement and recover from the Customer damages for any loss suffered by the Company as a result of such termination.
- 9.7 In the event that during the execution of this Agreement the Company incurs reasonable expenses, the Company shall be entitled to charge the Customer at cost for such expenses provided that such provision has been indicated in the Order or otherwise agreed in writing with the Customer.
- 9.8 In the event that the Company is requested to provide Goods or Services in addition to those set out in the Order, the Company shall charge the Customer for the provision of such Goods or Services at its prevailing rates.
- 9.9 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.
- 9.10 All elements of the charges for Services shall be reviewed by the Company to be effective at the end of the Minimum Term, and each subsequent anniversary thereof:
- 9.10.1 Provided that no material changes occur in suppliers' charges to the Company, the maximum annual increase in the annual charge will not exceed the Retail Price Index (all items) plus 5%;
- 9.10.2 In the event that there is material change to the charges made by the Company's supplier, the Company shall be entitled to pass such costs on to the Customer;
- 9.10.3 Any proposed changes in charges will be notified to the Customer in writing not less than ninety days prior to any anniversary.

- 9.11 Notwithstanding the provisions of clause 9.10, the Company shall be entitled to increase its charges for any part of the Services in the event that its suppliers increase their charges due to their increased costs at any time by providing the Customer not less than thirty day's notice;
- 9.12 The Company shall be entitled to require that the Customer pays a deposit before the commencement of Services:
- 9.12.1 The Company shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;
- 9.12.2 Deposits shall not attract interest.
- 9.13 In the event that the Customer elects not to pay for Services by direct debit, the Company shall levy a monthly handling charge which shall be charged at the Company's prevailing rate.
- 9.14 The Company shall be entitled to correct an invoice issued to the Customer for a period of twelve months following the date of the invoice:
- 9.14.1 Sub-clause 9.14 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.
- 9.15 In the event that the Customer modifies the Order after the Order has been accepted by the Company, the Company shall be entitled to charge the Customer for all expenses incurred up to the date of the modification.
- 9.16 Time is of the essence with regard to payments due under the terms of this Agreement.

## **10. LIMITATION OF LIABILITY**

- 10.1 The Customer acknowledges that the Company's obligations and liabilities are exhaustively defined in this Agreement.
- 10.2 The Customer agrees and accepts that the express obligations and warranties made by the Company 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.
- 10.3 Clause 10.2 does not exclude the 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.
- 10.4 Subject to sub-clauses 10.5, 10.6 and 10.7, but notwithstanding anything else in this Agreement, neither party shall accept liability to the other in contract, tort (including negligence) for breach of a statutory duty or otherwise arising under or in connection with this Agreement for, and the other party hereby waives and releases any claims it might otherwise have to be compensated in respect of, any of the following (without limitation):
- 10.4.1 Loss of production, loss of or corruption to data, loss of revenue, loss of profit or of contracts, loss of operation time, loss of goodwill, liability to third parties, loss of business or anticipated savings;
- 10.4.2 Any indirect, special or consequential loss or damage;
- Even if the party on whose part liability is alleged has been advised of the possibility of such loss or damages. For the avoidance of doubt, the provisions of this clause shall not preclude any claim by the Company for any breach by the Customer of any of the provisions of clause 9.
- 10.5 Notwithstanding anything to the contrary in this Agreement, nothing herein shall serve to limit either party's liability in respect of death or personal injury caused by or arising from the negligence of the other party, or liability arising out of or in connection with fraud or fraudulent misrepresentation or for any other liability that in law cannot be excluded or limited.
- 10.6 The Company shall be liable for physical damage to or loss of the Customer's tangible property to the extent it results from the negligence of the Company, its employees, agents or sub-contractors within



the course of their engagement under this Agreement up to an amount of £50,000 annually in respect of each incident or series of connected incidents.

- 10.7 In all other cases not falling within clauses 10.4 and 10.6, the Company's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution will not exceed, in any one calendar year the total amount of the charges (including VAT) collected by the Company in relation to the Services in the twelve month period prior to the date of the event which gave cause to claim, PROVIDED THAT before any such claim is made the Company is given reasonable opportunity to make good the breach giving rise to such claim;
- 10.8 The Company shall not in any event have any liability for non-provision in the provision of Services which:
- 10.8.1 Can be reasonably attributed to the acts or omissions of the Customer, its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to the Company;
  - 10.8.2 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;
  - 10.8.3 Arises from or consequence of use of the Company's Services other than in accordance with the express terms of this Agreement;
  - 10.8.4 Occurs during any period during which the Services have been suspended by the Company in accordance with clause 12.
- 10.9 The Company shall not in any event have any liability for non-provision of services arising from a delay to the RFS Date, howsoever caused.
- 10.10 In the event that any exclusion in clause 10.4 is held to be invalid or any reason the Company's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in clause 10.7.
- 10.11 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.
- 10.12 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 Company shall not be liable for any losses the Customer may incur resulting from the interception, corruption or loss of such data, and:
- 10.12.1 The Customer shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and
  - 10.12.2 The Customer shall be responsible for adopting such security measures as are appropriate to protect the Customer's systems.
- 10.13 The Customer acknowledges and agrees:
- 10.13.1 That the allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
  - 10.13.2 That the Company 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.
  - 10.13.3 That the Company shall not be liable to the Customer for any losses, costs or damages whatsoever under 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.

10.14 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 Company in the event that the Company's invoice remains unpaid two Working Days after receipt of written notice from the Company to do so.

11.1.2 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

11.1.3 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

11.1.4 Forthwith by the Customer in the event that the Services are regulated by a competent authority and the Company makes a change to the provision of the Services which has a material adverse effect on the Services provided under the terms of this Agreement;

11.1.5 Forthwith by the Company in advance of the supply of Services under the terms of this Agreement in the event that the Company's supplier declines to accept the Company's order for the supply of Services;

11.1.6 Forthwith by either party in the event that the Services are regulated by a competent authority and the Company ceases to be authorised by such authority to provide the Services;

11.1.7 Forthwith by either party in the event that the other party ceases to trade;

11.1.8 Forthwith by either party in the event that the other party commits a breach which cannot be remedied;

11.1.9 Forthwith by either party in the event that the other party is repeatedly in material breach of this Agreement;

11.1.10 Forthwith in the event that a right of termination arises in the event of Force Majeure;

11.1.11 In accordance with any additional terms of the attached Supplement.

11.2 On termination of this Agreement, the Customer shall forthwith return all Rental Equipment and Loan Equipment to the Company.

11.3 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 Company shall be entitled to suspend the provision of Services in whole or part, without notice if:

12.1.1 In the Company'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 Company's reasonable opinion, the Customer is in material breach of any other provision of this Agreement;
  - 12.1.3 Payments are unpaid by the due date;
  - 12.1.4 The Company is instructed to do so by Government or any other competent authority;
  - 12.1.5 Any consent, wayleave or authority required by the Company 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 not be provided by the Company until the situation which has given cause to the suspension is resolved by the Customer;
  - 12.2.2 The Customer shall continue to pay all of the Company's charges in relation to this Agreement during the period of suspension of Services;
  - 12.2.3 In the event that the Customer fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, the Company shall be entitled to terminate the Agreement under the terms of clause 11.
  - 12.2.4 When the Company is reasonably satisfied that the reason(s) for its suspension of the Services have been addressed, it will re-instate the Services. The Company shall be entitled to charge the Customer a reinstatement fee, as set out in the Tariff.
  - 12.2.5 The Company shall make reasonable endeavours to advise the Customer of suspension of services as soon as reasonably practicable.
- 12.3 The Company is not obliged to suspend services or give notice of suspension prior to exercising its right to terminate this Agreement.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All Intellectual Property in the Equipment owned, sold or used by the Company, its sub-contractors, 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 or used by the Owners. To the extent to which it is entitled, the Company grants to the Customer a non-exclusive 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.
- 13.2 The Customer agrees not to modify, copy, reverse engineer or make available to any third party, any Intellectual Property provided by the Company for use by the Customer under the terms of this Agreement.
- 13.3 All Intellectual Property owned or used by the Customer and/or its sub-contractors, agents and suppliers ('Customer Owners') pursuant to this Agreement shall be and will remain vested in the Customer Owners and except as expressly provided in this Agreement, the Company shall not acquire any rights, title or interest in or to any Intellectual Property owned by Customer Owners.
- 13.4 The Company 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 supplied by the Company under the terms of this Agreement. This indemnity shall be limited to £250,000 in respect of a single claim and shall not apply to claims or proceedings arising from:
- 13.4.1 Use of the Services in conjunction with services or equipment not supplied by the Company;
  - 13.4.2 Any unauthorised modification of Equipment, Software or Services provided by the Company;
  - 13.4.3 Use of the Services or Equipment other than in accordance with this Agreement.
- 13.5 In the event that the Customer wishes to assert its right to be indemnified in respect of IPR Claims it shall:

- 13.5.1 Promptly notify the Company in writing of any IPR Claim with full details of the IPR Claim;
  - 13.5.2 Promptly provide the Company 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 Company to take the action referred to in this sub-clause 13.5;
  - 13.5.3 Allow the Company 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 Company with such reasonable assistance required by the Company, regarding the IPR Claim;
  - 13.5.4 Not, without the consent of the Company, make an admission relating to the IPR Claim;
  - 13.5.5 Promptly take any action and give any information and assistance as the Company may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the Customer's rights in relation to the matter.
- 13.6 The Customer acknowledges that the Company may, at its discretion and cost, licence to the Customer alternative Intellectual Property and/or modify or procure the modification of the infringing item in each case provided that this does not give rise to an IPR Claim and does not materially affect the performance of the Services.
- 13.7 The Customer has no right to an indemnity under sub-clause 13.4 to the extent that the negligence of the Customer, its customers or their respective officers, employees or agents has contributed to the loss, demand, claim, damage, cost, expense or liability for which the Customer is claiming an indemnity.
- 13.8 The Customer 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 sub-clause 13.4

#### **14. MISCELLANEOUS**

- 14.1 The Company can recommend that another party carries out work, supplies goods, software or services. The Company does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.
- 14.2 In the case where the Company 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.
- 14.3 The Company cannot accept responsibility for any statements or representations unless such are made in writing.
- 14.4 In the event that Goods or Services are provided to the Customer at reduced or no charge for a trial period, the Company shall commence charging for the provision of the Services and Goods 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.
- 14.5 The signing by the Company of any of the Customer's documentation shall not imply any modification to this Agreement.
- 14.6 For the purpose of this Agreement, communications made between the Company 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 24.
- 14.7 The Company shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 14.8 The Company shall be entitled to and may record any or all calls to the Company for the purpose of monitoring service quality or for training.

14.9 Nothing in this Agreement or the Company'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; and

## **15. 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.

## **16. 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.

## **17. DISPUTE RESOLUTION**

17.1 In the event that 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 Company using the procedure set out in the Schedule to the applicable Supplement.

17.2 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.

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

17.3.1 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 in accordance with the Centre for Effective Dispute Resolution's Communication and Internet Service Adjudication Scheme (CISAS).

17.3.2 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 17.3 until they have attempted to settle said dispute by mediation and that mediation has terminated.

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

17.4 Nothing in this clause 17 shall prevent either party from:

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

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

## **18. FORCE MAJEURE**

18.1 If either party is unable to perform any part of this Agreement and such failure is caused by circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action (except by the Company's staff), government restrictions, legislation, act of God or any other occurrence of a like nature ('Force Majeure'), then it shall be excused from performance for a period which is reasonable under the prevailing circumstances, provided always that:

18.1.1 The party affected by the force majeure notifies the other as soon as is practicable, specifying its nature and extent of the circumstances;

18.1.2 The party affected by the force majeure uses reasonable endeavours to continue performing its obligations under this Agreement that are not affected by the force majeure.

- 18.1.3 In the event that 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.
- 18.2 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.
- 18.3 In the event that 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 thirty days 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. ASSIGNMENT**

- 19.1 The Company shall be entitled to subcontract all or any part of the Services. Such assignment will not relieve the Company of any of its obligations under this Agreement.
- 19.2 The Company shall be entitled to assign:
- 19.2.1 The benefit of this Agreement; or
- 19.2.2 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 and shall provide notice of such to the Customer.
- 19.3 The Customer shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

## **20. VARIATION**

- 20.1 In the event that the Customer requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made by placing an additional Order and will not be deemed accepted until acknowledged and agreed in writing by the Company.
- 20.2 Subject to the provisions of sub-clause 20.3, the Company shall be entitled to change the terms of this Agreement by giving the Customer not less than one month's notice, in order to:
- 20.2.1 Comply with legal or regulatory obligations;
- 20.2.2 Maintain the security and integrity of the Services;
- 20.2.3 Improve or clarify the Agreement;
- 20.2.4 Add, change or withdraw Services or service levels;
- 20.3 In the event that any change to the terms of this Agreement made by the Company result 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.
- 20.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.
- 20.5 No modification, amendment or other variation to this Agreement shall be valid unless agreed in writing and signed by both parties.

## **21. STAFF**

- 21.1 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 21.1 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.

- 21.2 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 Company; and
- 21.2.1 The Customer agrees to indemnify the Company and keep the Company indemnified against any liabilities arising out of or in connection with any claim that or decision by a Court or Tribunal that the contract of employment of any staff has transferred to the Company 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;
- 21.2.2 In the event that any contract of employment of any staff of the Customer has effect (or is argued to have effect) as if originally made between the Company and staff of the Customer as a result of the TUPE Regulations or otherwise at any time, then the Company shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the Customer agrees to indemnify the Company 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.
- 21.3 The indemnities in sub-clauses 21.2.1 and 21.2.2 are not subject to the limitation of liability set out in sub-clause 10.7.

## **22. WAIVER**

- 22.1 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.
- 22.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.
- 22.3 Any waiver to be effected must be agreed in writing and shall:
- 22.3.1 Be confined to the specific circumstances in which it is given;
- 22.3.2 Not affect any other enforcement of the same or any other right;
- 22.3.3 Unless expressly stated, be revocable at any time (in writing).

## **23. 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.

## **24. NOTICES**

- 24.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the company 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.
- 24.2 Notices shall not be deemed validly served if sent only by email or fax
- 24.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (including notices to terminate) may be communicated by fax or email.
- 24.4 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 24.

## **25. ENTIRE AGREEMENT**

- 25.1 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.
- 25.2 The parties acknowledge and agree that:
- 25.2.1 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;
  - 25.2.2 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;
  - 25.2.3 The Company 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.
- 25.3 No changes amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless in writing, signed by both parties and engrossed into this Agreement.
- 25.4 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by the Company shall not form part of this Agreement.
- 25.5 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

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