

The Customer's attention is particularly drawn to the provisions of clauses 9.4.2, 14.2.2, 17.1 and 22 which limit the Suppliers liability to the Customer.

1. Interpretation

1.1. In these Terms, the following definitions apply:

"Additional Order" means the single written document produced by the Supplier as confirmation of acceptance of an Additional Services Request.

"Additional Services Request" means a request by the Customer in writing for additional Services or Equipment or Mobile Equipment or new mobile connections or porting mobile connections.

"Annual Recurring Charges" means the recurring Charges in relation to the provision by the Supplier of the Call Logging Services as set out in the Order Proposal or Additional Order. **"xDSL Services"** means the provision of digital subscriber line services and/or broadband and any other ancillary services as described in the Order Proposal or Additional Order.

"Business Days" means any day (other than a Saturday, Sunday or public holiday) when the banks are generally open for normal business in the city of London.

"Call Logging Services" means the installation and configuration of the Call Logging Software and any Modification at the Sites, telephone and/or remote fault diagnosis.

"Call Logging Software" means the call logging software set out in the Order Proposal or Additional Order including any release of the call logging software which corrects faults, but not a Modification or New Version.

"CDR" means the data usage records received from the Third Party Provider.

"Charges" means the charges payable by the Customer for the supply of Services and/or the Equipment as set out in the Order Proposal or Additional Order or as notified to the Customer in writing.

"Commencement Date" means the date set out in the Order Proposal or Additional Order for the commencement of Services or, if no such date is present, the date upon which the Supplier notifies the Customer in writing of the commencement of the Services.

"Confidential Information" means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers and personnel of either Party which the other may receive or obtain in connection with the operation of this Contract or otherwise.

"Contract" means the contract between the Customer and the Supplier comprising the Request for Service, these Terms, any Order Proposals and any Additional Orders;

"Customer" means the individual, firm, corporation or organisation stated in the Request for Service with which the Supplier has contracted to provide the Services and/or the Equipment.

"Dedicated Internet Services" means the provision of unmetered, uncontended synchronous internet connectivity and other ancillary services as described in the Order Proposal or Additional Order.

"Deliverables" means the deliverables set out in the Order Proposal or Additional Order.

"Delivery Address" means the location or Sites set out in the Order Proposal or Additional Order.

"Dial Through Fraud" means the unauthorised use of any Equipment or Maintained Equipment by a third party so enabling such third party to place calls at the Customers expense.

"Embedded Software" means all the embedded software that runs and operates the Maintained Equipment.

"Equipment" means such telecommunications equipment, including the Mobile Equipment, (whether software or hardware) belonging to the Supplier or any Third Party Provider delivered and/or installed by the Supplier in order to allow the Customer to receive the Services.

"Equipment Fund" means the sum exclusive of VAT set out in the Order Proposal or Additional Order.

"Equipment Services" means the Maintenance Services and the Excepted Services.

"Excepted Services" means those services not included in the Maintenance Services including the correction of any fault due to:

- the Customer's failure to maintain a suitable environment for the Maintained Equipment at any Site including the failure to maintain a constant power supply, air conditioning or humidity control;
- the Customer's neglect or misuse or unauthorised upgrading of the Maintained Equipment in accordance with the manufacturers manuals or for the purposes for which the Maintained Equipment was designed;
- the alteration, modification or maintenance of the Maintained Equipment by a third party without the Supplier's prior written consent; the transportation or relocation of the Maintained Equipment save where the same has been performed under the direction of the Supplier;
- the use of Maintained Equipment consumables not approved by the Maintained Equipment manufacturers;
- any defect or error in any software embedded in or used by the Maintained Equipment;
- any accident or disaster effecting the Maintained Equipment including fire, flood, water, wind, lightning, vandalism or burglary; or
- the Customer's failure to provide the Company's personnel access to the Maintained Equipment;
- arising from the failure by the Customer to implement reasonable recommendations in respect of the Maintained Equipment or solutions to faults previously advised by the Supplier; or
- the painting or refurbishment of the Maintained Equipment;
- electrical work external to the Maintained Equipment; or
- the provision of consumables for use with the Maintained Equipment.

"Existing Services" means those telecommunications services utilised by the Customer prior to the Commencement Date.

"General Services" means the provision of consultancy and other ancillary services including the production of Deliverables as set out in the Order Proposal or Additional Order. **"Installation"** means the installation of any Equipment or ancillary equipment in accordance with the Order Proposal or as agreed in writing between the Parties.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Lines Services" means the provision of new and existing telephone lines and other ancillary services as described in the Order Proposal or Additional Order.

"Maintenance Services" means the remote fault diagnosis and testing and/or fault diagnosis and testing at any Site of any Maintained Equipment or Software reported as having a fault and the repair or replacement of parts of the Maintained Equipment or installation of any improved, modified, or corrected Software but excluding the Excepted Services.

"Maintained Equipment" means the items of telephone systems hardware including, without limitation, the Embedded Software and/or Equipment as set out in the Order Proposal or Additional Order or such other items of telephone systems hardware as agreed in writing between the Parties which are to be subject to the Equipment Services.

"Minimum Term" means the minimum term for the provision of the Services as set out in the Order Proposal or Additional Order. Where no minimum term appears in the Order Proposal or Additional Order, the minimum term shall be 3 years.

"Mobile Services" means the provision of mobile communications and related services by the Supplier to the Customer as set out in the Order Proposal or Additional Order.

"Mobile Charges" means the charges for the Mobile Equipment at the Supplier's list prices provided to the Customer from time to time and the charges incurred by the Customer in relation to the provision by the Supplier of the Mobile Services including, without limitation, usage charges for the Mobile Services as set out in the Order Proposal or Additional Order.

"Mobile Equipment" means the mobile devices or equipment (including software) acquired by the Customer from the Supplier in connection with the Mobile Services.

"Mobile Estate" means the mobile communications devices including SIMs as set out in the Order Proposal or Additional Order.

"Modification" means a release of the Call Logging Software which adds functionality or otherwise amends or upgrades the Call Logging Software, but which does not constitute a New Version.

"Monthly Recurring Charges" means the recurring Charges in relation to the provision by the Supplier of the ADSL Services and the Line Services including, without limitation, fixed monthly line rental as set out in the Order Proposal or Additional Order.

"MPLS Services" means the provision of multiprotocol label switching virtual private networks and other ancillary services as set out in the Order Proposal or Additional Order.

"New Version" means any new version of the Call Logging Software which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new version.

"Non-Geographic Numbers Services" means the routing of inbound calls received by the Customer on non-geographic numbers to a destination nominated by the Customer and other ancillary services as set out in the Order Proposal or Additional Order.

"Order Proposal" means the single written document produced by the Supplier and signed by the Customer comprising of an order proposal, order form and these Terms. **"PAC"** means the porting authorisation code, required to transfer a mobile number from one mobile network operator to another mobile network operator.

"Parties" means the Supplier and the Customer and a reference to a **"Party"** shall be a reference to each of them. **"Phone Systems Services"** means the Installation of the Equipment set out in the Order Proposal.

"Quarterly Recurring Charges" means the recurring Charges in relation to the provision by the Supplier of the Dedicated Internet Services and MPLS Services as set out in the Order Proposal or Additional Order.

"Request for Service" means the application form including, without limitation, details of the services or equipment that the Customer is requesting.

"Service Level Agreement" means the service level agreement as described in the Order Proposal or Additional Order, as amended from time to time, between the Supplier and the Customer and/or the Supplier and any Third Party Provider for the provision of the Services, which may be accessed via the Website or, if bespoke, that is attached to the Order Proposal or Additional Order.

"Services" means any of the MPLS Services, xDSL Services, Dedicated Internet Services, Lines Services, Call Logging Services, Non-Geographic Numbers Services, General Services, Voice Services, Mobile Services, Phone Systems Services and Maintenance Services to be provided by the Supplier under the Contract as specified in the Order Proposal or Additional Order together with the Supplier Helpdesk Services.

"SIM" means the subscriber identification module which contains a chip with all data necessary to operate a mobile device.

"Sites" means any of the Customer's premises, including, without limitation, to premises where the Services are provided and/or where any Equipment or Maintained Equipment is installed as set out in the Order Proposal or Additional Order or otherwise as agreed in writing between the Parties.

"Software" means the Embedded Software and any other software set out in the Order Proposal or Additional Order or such improved, modified or corrected version of the same. **"Specification"** means the document detailing the specification and version of the Call Logging Software which may be accessed via the Website.

"Supplier" means UK CLOUD COMMUNICATIONS LIMITED (Company Number: 10545136) whose registered office is at 21 Fircroft, Solihull, United Kingdom, B91 1JL **"Supplier Helpdesk Services"** means the telephone helpdesk run by the Supplier to enable the Customer to report faults with the Services or to request support (if applicable).

"System" means the Customer's existing telecommunications system including, without limitation, to the Customer's computer system and the hardware and software relating to or used upon in connection with it.

"Third Party Provider" means any third party with which the Supplier contracts to enable it to provide the Services and/or the Equipment.

"Variable Charges" means the Mobile Charges and the variable Charges in relation to the provision by the Supplier of the General Services, xDSL Services, Dedicated Internet Services, MPLS Services, Non-Geographical Numbers Services, Voice Services, Line Services and Mobile Services including, without limitation, usage charges for the Services and time, expenses and materials incurred by the Supplier or its Third Party Provider, as set out in the Order Proposal or Additional Order.

"VAT" means value added tax chargeable under English law for the time being and any similar additional tax.

"Voice Services" means the provision of outbound telephony services, CPS and other ancillary services as described in the Order Proposal or Additional Order. **"Website"** means <http://www.ardentelecom.com>

1.2. Headings in these terms and conditions shall not affect their interpretation.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. Save in respect of clause 25, a reference in these Terms to writing or written includes e-mail and faxes.

1.5. Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.6. If there is any conflict or ambiguity between any of the clauses or terms of the Contract the conflict shall be resolved in accordance with the following order of precedence: (a) these Terms; (b) the Order Proposal and/or any Additional Orders; and (c) the Request for Services or Additional Services Request.

2. Commencement

2.1. The Services shall be supplied from the Commencement Date for the Minimum Term.

2.2. Upon expiry of the Minimum Term, the Services shall continue to be supplied to the Customer until the Contract is terminated in accordance with clause 25.

3. Additional Services

3.1. The Customer may at any time during the term of the Contract make an Additional Services Request to the Supplier in writing.

3.2. The Supplier shall be entitled to accept, through the issue of an Additional Order, or reject the Additional Services Request.

3.3. Each Additional Order shall, in relation to that Additional Order, have a new Commencement Date and Minimum Term as set out in the Additional Order.

3.4. Once issued, the Additional Order will be effective.

3.5. The Supplier shall supply the Services set out in the Additional Order in accordance with these Terms.

4. The Supplier's Obligations

- 4.1. The Supplier shall provide the Services and, where relevant, the Equipment in accordance with the Order Proposal or Additional Order.
- 4.2. Where necessary, the Supplier or the Third Party Provider may carry out a survey to assess the Customer's sites for the purpose of installing any new services prior to the Commencement Date or on any such dates as to be agreed between the Parties.
- 4.3. The Supplier shall use its reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises or Sites that have been communicated to it.
- 4.4. The Supplier shall use all reasonable endeavours to meet any performance dates specified by it, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.5. The Supplier shall use its reasonable endeavours to deliver the Services and the Deliverables and, where relevant, will do so in accordance with the Service Level Agreement.
- 4.6. The Supplier shall use its reasonable endeavours to procure that, where relevant, any Third Party Provider delivers the Services in accordance with the Service Level Agreement.

5. The Customer's Obligations

- 5.1. The Customer shall at all times during the term of the Contract:
- 5.1.1. co-operate with the Supplier in all matters relating to the Services;
- 5.1.2. provide the Supplier, any Third Party Provider, its agents, subcontractors, consultants and employees with such rights and access to any Equipment, Maintained Equipment, Sites, records kept pursuant to the Contract, data and other facilities as reasonably required by the Supplier upon reasonable notice;
- 5.1.3. provide to the Supplier with such information as the Supplier may reasonably request or require, including information relating to all Existing Services, and ensure that it is accurate in all material respects;
- 5.1.4. co-operate fully with the Supplier's personnel in the diagnosis of any error or defect in the Equipment and/or Maintained Equipment, as reasonably requested by the Supplier;
- 5.1.5. provide, at its own expense, remote access (where necessary) to the Equipment and Maintained Equipment at all Sites;
- 5.1.6. procure the grant of all wayleaves and rights of way as are reasonably required by the Supplier or any Third Party Providers for the provision of the Services;
- 5.1.7. prepare and maintain the relevant Sites for the supply of the Services including providing, at its own expense, suitable accommodation, facilities, assistance for any Equipment and that all necessary power supply, electrical and other fittings are in place and in working order;
- 5.1.8. ensure, where relevant, that it complies with all obligations as set out in the Service Level Agreement;
- 5.1.9. ensure that all hardware and software comprising the System (other than any Equipment or Software) conforms to all applicable standards and law, including adequate approvals and licences that are necessary to enable the Customer to use the System;
- 5.1.10. ensure that no alterations, adaptations or modifications are made to any Equipment or Maintained Equipment in anyway nor permit any Equipment or Maintained Equipment to be combined with any other equipment, programs or software without the Suppliers prior written consent;
- 5.1.11. ensure that it takes all reasonable steps to keep any passwords issued by the Supplier pursuant to the provision of the Services private and confidential and to notify the Supplier immediately in writing or by telephone if such passwords become known to any other person;
- 5.1.12. ensure that the Services provided are used in accordance with all rules, limits or restrictions set out on the Website and not used for any illegal, immoral or fraudulent purposes and that their use does not infringe upon the rights of any third party whether in contract, tort, warranty, or strict liability;
- 5.1.13. ensure that billing addresses, contact addresses and information which the Customer provides to the Supplier are accurate and up to date at all times.
- 5.2. The Customer is responsible for maintaining the security of any business process impacted by the use of the Services including, but not limited to, protecting all passwords, making back-up copies of all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.
- 5.3. Where the Customer becomes aware of any matters which the Customer knows or ought reasonably be expected to know constitute a threat to the security of the Customer and which may affect the Services, the Customer will immediately advise the Supplier in writing.

6. Title, Risk and Delivery

- 6.1. The Supplier shall deliver the Equipment to the Delivery Address. Time shall not be of the essence for the delivery of any Equipment.
- 6.2. Where the Customer is required to take delivery of Equipment, it shall do so within a maximum of 7 days of the Supplier giving notice to it that the Equipment is ready for delivery.
- 6.3. The Supplier may deliver the Equipment by separate instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of these Terms.
- 6.4. Risk in the Equipment shall pass to the Customer on delivery to the Customer at the Delivery Address.
- 6.5. Save in respect of Equipment delivered pursuant to the provision of Mobile Services and Phone System Services by the Supplier, title in the Equipment shall not pass to the Customer and the Customer shall:
- 6.5.1. insure the Equipment to its full reinstatement value with a reputable insurer and provide a copy of such insurance documentation to the Supplier if requested to do so in writing by the Supplier;
- 6.5.2. hold the Equipment on a fiduciary basis as the Supplier's or a third party owners bailee;
- 6.5.3. use the Equipment in accordance with the manufacturers instructions; and
- 6.5.4. mark the Equipment as the property of the Supplier and upon request inform the Supplier of the exact location of the Equipment.
- 6.6. In the case of Equipment delivered pursuant to the provision of Mobile Services and Phone System Services by the Supplier, title in the equipment shall not pass to the Customer until the Customer has paid the Supplier in full for any and all Equipment delivered to the Customer pursuant to clause 6.1 and until title in the equipment has passed to the Customer, the Customer shall:
- 6.6.1. insure the Equipment to its full reinstatement value with a reputable insurer and provide a copy of such insurance documentation to the Supplier if requested to do so in writing by the Supplier;
- 6.6.2. hold the Equipment on a fiduciary basis as the Supplier's or a third party owners bailee;
- 6.6.3. use the Equipment in accordance with the manufacturers instructions; and
- 6.6.4. keep the Equipment separate from any other equipment and mark the Equipment as the property of the Supplier.
- 6.7. The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any Sites where the Equipment is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated to recover them.

7. Charges and Payment

- 7.1. Unless otherwise set out in the Order Proposal or Additional Order, the Variable Charges will be invoiced by the Supplier monthly in arrears.
- 7.2. Unless otherwise set out in the Order Proposal or Additional Order, the Monthly Recurring Charges will be invoiced monthly in advance.
- 7.3. Unless otherwise set out in the Order Proposal or Additional Order, the Quarterly Recurring Charges will be invoiced quarterly in advance.
- 7.4. Unless otherwise set out in the Order Proposal or Additional Order, the Annual Recurring Charges will be invoiced annually in advance.
- 7.5. The Charges shall accrue from the Commencement Date set out in the Order Proposal or Additional Order.
- 7.6. Invoices for the Charges incurred will be sent to the Customer at the address specified in the Request for Services or other such address as the Customer notifies the Supplier of in writing as the address to which bills and invoices should be submitted for settlement.
- 7.7. The Customer shall pay all invoices within fourteen (14) days of the date of each invoice by direct debit unless otherwise agreed with the Supplier in writing. If the acts or omissions of the Customer results in a direct debit collection by the Supplier to fail, the Supplier shall charge the Customer a fixed charge of £15.00, added to the invoice amounts due and overdue, for each occasion the direct debit request fails.
- 7.8. The Supplier shall be entitled to charge interest on all overdue amounts at the rate of 4% above Barclays Bank Plc base rate. Interest will accrue daily on overdue amounts from the due date of the invoice until the date of payment.
- 7.9. The Customer will not set-off or deduct any amount from any Charges due for payment except for amounts notified to the Supplier in writing which have been acknowledged by the Supplier as legitimate queries or disputes.
- 7.10. The Supplier reserves the right to increase the Charges for any of the Services at any time after the expiry of the Minimum Term on giving not less than 30 days written notice to the Customer.
- 7.11. The Customer further acknowledges that any price increase made by a Third Party Provider for any of the Services may result in the Charges for that particular Service being increased at any time during the Contract. The Supplier will provide the Customer with written notice, where possible, 30 days prior to the increase of any Charges.
- 7.12. Where the Supplier gives notice of an increase of Charges for any of the Services pursuant to clauses 7.10 and/or 7.11 and such increase is not acceptable to the Customer, the Customer shall have the right, without limiting its other rights or remedies, to terminate only those Services affected by the increase of Charges by giving 30 days written notice to the Supplier within 7 days of the date of the Supplier's notice. If such notice is not given within 7 days of the Suppliers notice, the Customer will be deemed to have accepted the increase of Charges.
- 7.13. Where the Customer accepts an increase of Charges, or is deemed to accept an increase of Charges in accordance with clause 7.12, the increased Charges shall be applied to the affected Services from the date of the Customer's acceptance. For avoidance of doubt, the Minimum Term of the Contract shall remain unchanged.
- 7.14. The Charges are exclusive of VAT which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.15. The Supplier shall charge and the Customer shall pay for the Supplier's or Third Party Provider's time at its then current rates and for any expenses incurred by them in responding to any contact with the Supplier Helpdesk Services in the event that:
- 7.15.1. the fault is not found or cannot be replicated; or
- 7.15.2. the rectification and/or repair of the fault is not included in the Services; or
- 7.15.3. the Supplier, or its Third Party Provider determines that no fault exists and that reconfiguration work is required to the Equipment and/or the Services.

8. The Equipment Services

- 8.1. In addition to clause 4, when providing the Equipment Services the Supplier shall, where requested by the Customer by telephone or in writing, use reasonable endeavours to deliver the Excepted Services.
- 8.2. In addition to clause 5, the following Customer obligations apply to the provision of the Equipment Services:
- 8.2.1. Any servicing, upgrades, improvements, repairs or replacements made by the Supplier to any Maintained Equipment shall form part of the Maintained Equipment. Any parts of the Maintained Equipment, faulty or otherwise, removed from any Site by the Supplier or its Third Party Providers during the provision of the Equipment Services shall be the sole property of the Supplier unless otherwise agreed by the Supplier in writing.
- 8.2.2. The Customer shall be responsible for any damage to the Maintained Equipment other than damage caused by the actions of the Supplier. The Customer undertakes to carry out all measures and precautions necessary to ensure that the Maintained Equipment is effectively protected and secured against the threat of any destruction, damage, change in condition or loss, arising through any circumstance (whether wilful and malicious or unintended) and confiscation, attachment, seizure or immobilisation by process of court, or impairment of possession by private or state bodies. The Customer shall be obliged to pay the Charges incurred in connection with the provision of the Maintenance Services, notwithstanding any loss of or damage to any Maintained Equipment.
- 8.2.3. The Customer shall not request or permit anybody other than the Supplier to provide any maintenance services in respect of the Maintained Equipment without the Supplier's prior written approval.
- 8.2.4. The Customer shall insure the Maintained Equipment to its full reinstatement value with a reputable insurer and provide a copy of such insurance documentation to the Supplier upon written request.
- 8.2.5. The Customer warrants that it has title to the Maintained Equipment or it has the right to permit the Supplier to perform the Equipment Services on the Maintained Equipment.
- 8.3. In addition to clause 7, the following payment terms apply to the provision of the Equipment Services unless otherwise set out in the Order Proposal or Additional Order:
- 8.3.1. The Supplier shall invoice the Customer for 50% of the Charges incurred in relation to the provision and installation of any Equipment supplied in accordance with the provision of the Equipment Services as set out in the Order Proposal or Additional Order.
- 8.3.2. The Customer acknowledges that the installation of any Equipment shall not commence until the invoice raised pursuant to clause 8.3.1 has been paid in full.
- 8.3.3. Following completion of the installation of any Equipment, the Supplier shall invoice the Customer for the remaining 50% of the Charges incurred in relation to the provision and installation of any Equipment.
- 8.3.4. The Charges incurred in connection with the provision of the Maintenance Services as set out in the Order Proposal or Additional Order will be invoiced annually in advance.
- 8.3.5. The Charges incurred in connection with the provision of the Excepted Services will be invoiced monthly in arrears

9. The Call Logging Services

- 9.1. In addition to clause 4, when providing the Call Logging Services, the Supplier shall inform the Customer of any Modification available and shall offer to sell such Modification to the Customer on the terms on which they are generally made available to the Supplier's customers.
- 9.2. In addition to clause 5, the following Customer obligations apply to the provision of the Call Logging Services:
- 9.2.1. The Customer shall not request or permit anybody other than the Supplier to provide any Call Logging Services in respect of the Call Logging Software without the Supplier's prior written approval.
- 9.2.2. The Customer warrants that it has title to any equipment upon which the Call Logging Software is to be installed and it has the right to permit the Supplier to perform the Call Logging Services using such equipment.
- 9.3. The following provisions apply to the provision of the Call Logging Services in relation to the licencing of the Call Logging Software;

- 9.3.1. The Supplier grants to the Customer a non-exclusive, personal, non-transferable, perpetual licence in the Call Logging Software commencing on, and including, the Commencement Date to use the Call Logging Software in the United Kingdom.
- 9.3.2. In relation to scope of use:
- 9.3.2.1. for the purposes of clause 9.3.1, use of the Call Logging Software shall be restricted to use at the Sites in object code form for the purpose of processing the Customer's telephone call data for the normal business purposes of the Customer;
- 9.3.2.2. the Customer may not use the Call Logging Software other than as specified in clause 9.3.2.1 without the prior written consent of the Supplier and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;
- 9.3.2.3. the Customer may make back-up copies of the Call Logging Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software at the Sites and take all reasonable steps to prevent unauthorised copying;
- 9.3.2.4. except as stated in this clause 9.3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Call Logging Software in whole or in part except to the extent that any reduction of the Call Logging Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Call Logging Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 9.4. In addition to clause 7, the following payment terms apply to the provision of the Call Logging Services unless otherwise set out in the Order Proposal or Additional Order:
- 9.4.1. The Charges incurred in connection with the provision of the Call Logging Software will be invoiced and fall payable before the Commencement Date.
- 9.4.2. For the avoidance of doubt, the Customer shall remain liable for all Charges incurred in relation to the provision by the Supplier of the Call Logging Services, notwithstanding any fault with any Equipment or Call Logging Software used in connection with the Call Logging Services.
- 9.5. In addition to clause 22, the following warranties and limitation of liability terms apply to the provision of the Call Logging Services: 9.5.1. The Customer acknowledges and agrees that the Supplier shall have no responsibility or liability for any failure, delay or omission of the Customer's telephone network to supply of any data required by the Call Logging Software.
- 9.5.2. The Supplier warrants that the Call Logging Software will conform in all material respects to the Specification for a period of 90 days from the date of this Contract (**Warranty Period**).
- 9.5.3. If, within the Warranty Period, the Customer notifies the Supplier in writing that the Call Logging Software contains a defect or fault and does not conform in all material respects to the Specification, and such defect or fault does result from the acts or omissions of the Customer, including without limitation to using the Call Logging Software outside of the terms of the Contract, for a purpose other than that for which it was designed or in conjunction with equipment not supplied or approved by the Supplier, the Supplier shall, at the Supplier's option, do one of the following:
- 9.5.3.1. repair or procure the repair of the Call Logging Software; or
- 9.5.3.2. replace or procure the replacement of the Call Logging Software; or
- 9.5.3.3. terminate this Contract immediately by giving notice in writing to the Customer and refunding any of the Charges paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Call Logging Software and/or the Call Logging Services to the date of termination) on return of the Call Logging Software and all copies thereof,
- provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including sufficient information to enable the Supplier or its Third Party Providers to re-create the defect or fault.
- 9.6. In addition to clause 20, the following terms apply to the provision of the Call Logging Services in relation to the Intellectual Property Rights attaching to the Call Logging Software
- 9.6.1. Notwithstanding clause 20, the Customer acknowledges that all Intellectual Property Rights in the Call Logging Software and any Modification belongs and shall belong to the Supplier or its Third Party Providers, and the Customer shall have no rights in or to the Call Logging Software other than the right to use it in accordance with the terms of the Contract.
- 9.6.2. The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification or maintenance of the Call Logging Software (or any part thereof) in accordance with the terms of the Contract infringes the Intellectual Property Rights of a third party (**Infringement Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim. For the avoidance of doubt, this clause 9.6.2 shall not apply where the Infringement Claim in question is attributable to the possession, use, development, modification or maintenance of the Call Logging Software (or any part thereof) by the Customer other than in accordance with the terms of this Contract or use of a non-current release of the Call Logging Software.
- 9.6.3. Clause 9.6.2 is conditional on:
- 9.6.3.1. the Customer notifying the Supplier in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
- 9.6.3.2. the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of the Supplier, not to be unreasonably withheld or delayed;
- 9.6.3.3. the Supplier having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving the Supplier all reasonable assistance in connection with those negotiations and such litigation at the Supplier's request and expense.
- 9.6.4. If any Infringement Claim is made, or is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 9.6.4.1. procure for the Customer the right to continue using the Call Logging Software (or any part thereof) in accordance with the terms of this Contract;
- 9.6.4.2. modify the Call Logging Software so that it ceases to be infringing;
- 9.6.4.3. replace the Call Logging Software with non-infringing software;
- 9.6.4.4. terminate this Contract immediately by giving notice in writing to the Customer and refund any of the Charges paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Call Logging Software and/or the Call Logging Services to the date of termination) on return of the Call Logging Software and all copies thereof,
- provided that if the Supplier modifies or replaces the Call Logging Software, the modified or replacement Call Logging Software must comply with the warranty contained in clause 9.5.2 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Contract been references to the date on which such modification or replacement was made.
- 10. The xDSL Services**
- 10.1. In addition to clause 5, the following Customer obligations apply to the provision of the xDSL Services:
- 10.1.1. The Customer shall provide or shall procure that its third party provider provides all new and existing telephone lines and other ancillary services ("**Lines**") in the event the Supplier is not required to provide such Lines pursuant to the Order Proposal or Additional Order.
- 10.1.2. In the event the Customer terminates any Lines over which the xDSL Services are provided or enables any incompatible services which materially prejudices the ability of the Supplier to provide any of the xDSL Services the Supplier and/or its Third Party Provider shall have no liability for any such non-availability of the xDSL Services as a result of such actions.
- 10.2. In addition to clause 7, the following payment terms apply to the provision of the xDSL Services unless otherwise set out in the Order Proposal or Additional Order:
- 10.2.1. The Charges incurred in connection with the set up and activation of the xDSL Services and, for any modems, routers and microfilters necessary to use the xDSL Services as set out in the Order Proposal or Additional Order will be invoiced and will be payable on or before Commencement Date.
- 10.2.2. All Variable Charges incurred in relation to the provision of xDSL Services shall be calculated by reference to the CDR. The CDR shall be accepted as such by the Customer, save in the case of manifest error by the Third Party Provider.
- 11. Dedicated Internet Services**
- 11.1. In addition to clause 5, the following Customer obligations apply to the provision of the Dedicated Internet Services:
- 11.1.1. The Customer shall provide or shall procure that its third party provider provides all Lines in the event the Supplier is not required to provide such Lines pursuant to the Order Proposal or Additional Order.
- 11.1.2. In the event the Customer terminates any Lines over which the Dedicated Internet Services are provided or enables any incompatible services which materially prejudices the ability of the Supplier to provide any of the Dedicated Internet Services the Supplier and/or its Third Party Supplier shall have no liability for any such non-availability of the Dedicated Internet Services as a result of such actions.
- 11.1.3. The Customer shall pay to the Supplier any additional excess construction charges incurred by the Supplier in connection with the Installation of new telephone lines as a result of the acts and omissions of the Customer during the Contract.
- 12. The MPLS Services**
- 12.1. In addition to clause 4, when providing the MPLS Services, the Supplier shall have no responsibility or liability for the Customers local area network or equipment, other than the Equipment necessary to use any MPLS Services as set out in the Order Proposal or Additional Order.
- 12.2. In addition to clause 5, the following Customer obligations apply to the provision of the MPLS Services:
- 12.2.1. The Customer shall be responsible for the interoperability of the local area network and/or any equipment with the Equipment necessary to use any MPLS Services as set out in the Order Proposal or Additional Order.
- 12.2.2. The Customer shall provide or shall procure that its third party provider provides all Lines in the event the Supplier is not required to provide such Lines pursuant to the Order Proposal or Additional Order.
- 12.2.3. In the event the Customer terminates any Lines over which the MPLS Services are provided or enables any incompatible services which materially prejudices the ability of the Supplier to provide any of the MPLS Services, the Supplier and/or its Third Party Supplier shall have no liability for any such non-availability of the MPLS Services as a result of such actions.
- 12.2.4. The Customer shall pay to the Supplier any additional excess construction charges incurred by the Supplier in connection with the Installation of services as a result of the acts and omissions of the Customer during the Contract.
- 12.3. In addition to clause 7, the following payment terms apply to the provision of the MPLS Services unless otherwise set out in the Order Proposal or Additional Order:
- 12.3.1. Any Installation Charges incurred in connection with the provision of the MPLS Services will be invoiced and are payable immediately on completion of the Installation.
- 12.3.2. In the event the Customer postpones the Installation beyond the original date specified in the Request for Services (**RFS Date**), then, the sixteenth (16th) day following the original RFS Date shall be deemed to be the Commencement Date in respect of the MPLS Services and the Supplier shall be entitled to commence invoicing for the MPLS Services and for any local access circuits associated with the MPLS Services on that date, regardless of whether or not the Customer has commenced use of the MPLS Services or any local access circuits related to the MPLS Services.
- 12.3.3. The Customer shall pay upon request of the Supplier regulatory and any other surcharges assessed on the MPLS Services including permanent or temporary surcharges to meet government obligations, government fees or assessments or any charges established or caused by government, such surcharges to be invoiced in accordance with clause 7.6.
- 13. Non-Geographic Numbers Services**
- 13.1. In addition to clause 4, the following Supplier obligations apply to the provision of the Non-Geographic Numbers Services:
- 13.1.1. The Supplier shall have no obligation to provide the Customer with the use of existing numbers utilised by the Customer as a result of the transfer of the Non-Geographic Numbers Services to the Supplier.
- 13.1.2. Where the Supplier allocates to the Customer any telephone numbers or codes as part of the Non-Geographic Numbers Services, the Customer acknowledges that it will not acquire any legal, equitable or other rights in relation to any numbers or codes. The Supplier may on giving the Customer notice withdraw or change any such numbers or codes allocated to the Customer.
- 13.2. In addition to clause 5, the following Customer obligations apply to the provision of the Non-Geographic Numbers Services: 13.2.1. The Customer shall provide or shall procure that its third party provider provides all new and existing telephone lines and other ancillary services ("**Lines**") in the event the Supplier is not required to provide such Lines pursuant to the Order Proposal or Additional Order.
- 13.2.2. In the event the Customer terminates any Lines over which the Non-Geographic Numbers Services are provided or enables any incompatible services which materially prejudices the ability of the Supplier to provide any of the Non-Geographic Numbers Services the Supplier and/or its Third Party Supplier shall have no liability for any such non-availability of the Non-Geographic Numbers Services as a result of such actions.
- 13.2.3. The Customer shall provide the Supplier with 5 days notice in writing of any use of the Non-Geographic Numbers Services for marketing purposes or otherwise in which the Non-Geographic Numbers Services will be utilised above the normal course of business.
- 13.3. In addition to clause 7, the following payment terms apply to the provision of the Non-Geographic Numbers Services unless otherwise set out in the Order Proposal or Additional Order:
- 13.3.1. All Charges incurred in connection with the provision of the Non-Geographic Numbers Services will be calculated by reference to the CDR and the CDR shall be accepted as such by the Customer, save in the case of manifest error by the Third Party Provider.
- 14. The Voice Services**
- 14.1. In addition to clause 5, the following Customer obligations apply to the provision of the Voice Services: 14.1.1. The Customer shall provide or shall procure that its third party provider provides all new and existing telephone lines and other ancillary services ("**Lines**") in the event the Supplier is not required to provide such Lines pursuant to the Order Proposal or Additional Order.

- 14.1.2. In the event the Customer terminates any Lines over which the Voice Services are provided or enables any incompatible services which materially prejudices the ability of the Supplier to provide any of the Voice Services the Supplier and/or its Third Party Supplier shall have no liability for any such non-availability of the Voice Services as a result of such actions 14.2. In addition to clause 7, the following payment terms apply to the provision of the Voice Services unless otherwise set out in the Order Proposal or Additional Order:
- 14.2.1. All Charges incurred in connection with the provision of the Voice Services will be calculated by reference to the CDR and the CDR shall be accepted as such by the Customer, save in the case of manifest error by the Third Party Provider.
- 14.2.2. For the avoidance of doubt, the Customer shall remain liable for all Charges incurred in relation to the provision by the Supplier of the Voice Services, notwithstanding any Dial Through Fraud.
- 15. The Lines Services**
- 15.1. In addition to clause 5, the Customer shall pay to the Supplier any additional excess construction charges incurred by the Supplier in connection with the Installation of new telephone lines as a result of the acts and omissions of the Customer during the Contract.
- 16. The Phone System Services**
- 16.1. In addition to clause 4, the Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier in respect of the Equipment supplied in connection with the provision of the Phone System Services.
- 16.2. In addition to clause 7, the Supplier shall invoice the Customer for 50% of the Charges incurred in relation to the provision by the Supplier of the Phone System Services as set out in the Order Proposal or Additional Order upon entering into this contract, with the balance of the Charges to be invoiced upon completion of the Installation of the Equipment.
- 17. The Mobile Services**
- 17.1. In addition to clause 4, the Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier in respect of the Mobile Equipment.
- 17.2. In addition to clause 5, the following Customer obligations apply to the provision of the Mobile Services:
- 17.2.1. The Customer shall inform the Supplier of all existing third party providers of services akin to the Mobile Services and provide the Supplier with all information and cooperation reasonably requested in relation to such third party supplier including, without limitation, authorisation to obtain PACs where necessary.
- 17.3. The following provisions shall apply to the provision of the Mobile Services in relation to the Equipment Fund
- 17.3.1. The Equipment Fund, details of which will be contained within the Order Proposal or Additional Order, will be calculated by the Supplier in accordance with the Customers requirements and the predicted Charges to be paid by the Customer.
- 17.3.2. The Customer shall only use the Equipment Fund to acquire Mobile Equipment directly from the Supplier.
- 17.3.3. The Equipment Fund shall be adjusted on a quarterly basis, following reconciliation by the Supplier, to an amount equal to the percentage set out in the Order Proposal or Additional Order of the actual Charges paid by the Customer to the Supplier.
- 17.3.4. In the event that the Customer acquires Mobile Equipment in excess of the Equipment Fund or the reconciled Equipment Fund, calculated in accordance with clause 17.3.3, the Supplier shall invoice the Customer for the difference between the Equipment Fund or reconciled Equipment Fund and the value of the Mobile Equipment acquired by the Customer, such invoice to be paid by the Customer in accordance with clause 7.7.
- 17.4. In addition to clause 22, the Customer acknowledges that network coverage is often affected by factors beyond the Suppliers control such as weather, faults in other networks, coverage limitations etc. and the Supplier shall not have any liability to the Customer for poor network coverage in connection with the provision of the Mobile Services.
- 18. Suspension of Service**
- 18.1. The Supplier may suspend the Services without liability to the Customer with immediate effect upon the provision of notice in writing in the event that:
- 18.1.1. the Supplier reasonably believes that the Services are being used in an unauthorised or illegal manner;
- 18.1.2. the Customer is in material breach of any of its obligations under this Contract;
- 18.1.3. OfCom, PhonepayPlus or any other regulatory body requires the Supplier to suspend the Services;
- 18.1.4. the Customer fails to pay any of the invoices on the due date;
- 18.1.5. the Supplier needs to carry out scheduled updates, upgrades or maintenance to the Services;
- 18.1.6. the Supplier, in cases of emergency, needs to carry out unscheduled maintenance to the Services.
- 18.2. The Customer may be liable for an administration fee if suspension arises pursuant to clause 18.1 due to the Customer's default and the Supplier, in the Supplier's sole discretion, reinstates the Services following suspension.
- 19. Third Party Providers**
- 19.1. The Customer agrees and acknowledges that in order for the Supplier to provide the Services to the Customer, the Supplier may have to enter into contracts with a Third Party Provider.
- 20. Intellectual Property Rights**
- 20.1. As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Services shall be owned by the Supplier. Subject to clause 20.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.
- 20.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 21. Confidential Information**
- 21.1. Each Party undertakes to the other that it will not disclose the terms of this Contract or divulge, cause or knowingly permit any third party to become aware of any Confidential Information provided that this clause 21.1 shall not restrict the disclosure of any Confidential Information to the extent that:
- 21.1.1. such disclosure is required by law or any judicial or regulatory authority;
- 21.1.2. such information is or becomes (otherwise than by reason of a breach of this undertaking) within the public domain;
- 21.1.3. subject to clause 21.2, such disclosure is necessary to enable either Party to perform or enforce any of its rights under this Agreement
- 21.2. Each Party shall be entitled to use the information received from the other for the purposes of this Contract only and shall not disclose such Confidential Information or any part thereof to any other person, firm or corporation except to its employees, agents or third parties to whom it is necessary for them to have access to it in order to perform the disclosing Party's contractual obligations provided that the entity to whom such disclosure is made receives and holds the Confidential Information on the same basis as it is held by the disclosing Party under the terms of this Contract.
- 21.3. This clause 21 shall survive termination of the Contract.
- 22. Limitation of Liability**
- 22.1. Nothing in these Terms shall limit or exclude the liability of either Party for: 22.1.1. death or personal injury resulting from negligence; or 22.1.2. fraud or fraudulent misrepresentation.
- 22.2. Subject to clauses 9.4.2, 14.2.2, 17.1 and 22.1:
- 22.2.1. the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract for the provision of Services or as a result of Dial Through Fraud; and
- 22.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, in any year shall be limited to the Charges paid by the Customer for the Services in such year of the Contract.
- 22.3. Subject to clause 9.4.2, 14.2.2, 17.1 and 22.2, the Suppliers entire liability under this Contract for loss of or damage to property (both real and personal) of the Customer is limited to £1,000,000 for any event or series of connected events.
- 22.4. In addition to clause 22.2, the Supplier shall under no circumstances whatsoever be liable to the Customer in relation to:
- 22.4.1. any defect in equipment belonging to a third party, notwithstanding Installation of such equipment by the Supplier;
- 22.4.2. any costs, expenses or charges incurred or imposed by any existing Third Party Provider of any Services to the Customer as a result of the transfer of the Services to the Supplier;
- 22.4.3. the unsupervised integration of any Equipment with any third party equipment or software;
- 22.4.4. any advice given or suggestions made by the Supplier to the Customer in connection with the provision of the Services; including, without limitation, advice in relation to the current market setting or market predications;
- 22.4.5. interruption to the Services through installation, alteration, adjustment, repair, relocation, reinstallation, modification or re-configuration of the Equipment other than by the Supplier or its Third Party Provider's or with the Supplier's prior written consent; or
- 22.4.6. interruption to the Services due to any accidental or wilful damage to or misuse of the Equipment or Services, abnormal working conditions or any failure to observe the Supplier's and/or the Third Party Provider's guidelines and recommendations.
- 22.5. The Customer acknowledges that the Services, Equipment and/or Maintained Equipment in general will not be uninterrupted or error free or that any access or service speeds cannot be guaranteed and agrees that the existence of such errors shall not constitute a breach of the Contract.
- 22.6. The Customer acknowledges and agrees that the Supplier shall have no responsibility or liability for any failure, delay, act or omission of the public switched telephone network in relation to the installation of the Equipment or connection of the Equipment to the public switched telephone network.
- 23. Assignment**
- 23.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 23.2. The Supplier may assign, transfer, charge, mortgage, sub-contract or delegate in any manner any or all of its obligations under this Contract to any third party or agent.
- 24. Force Majeure**
- 24.1. The Supplier shall have no liability to the Customer under this Contract if it is prevented from, or delayed in performing, its obligations under the Contract by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or the failure of any telecommunications providers or networks (**Force Majeure Event**).
- 24.2. The Customer will remain liable for all of their obligations pursuant to clause 5 despite the occurrence of a Force Majeure Event.
- 25. Termination**
- 25.1. Without prejudice to any other rights or remedies which either Party may have, either Party may terminate the Contract by giving 90 days written notice to the other, served in accordance with clause 30.3, to expire on the last day of the Minimum Term and thereafter on any anniversary of the Commencement Date.
- 25.2. Without prejudice to any other rights or remedies which either Party may have, the Supplier may terminate any part of the Services upon reasonable written notice to the Customer, without liability, in the event that the Supplier is unable to continue the provision of the Services without incurring additional expense if:
- 25.2.1. such part of the Services supplied by a Third Party Provider, whether directly to the Customer or to the Supplier, are discontinued for any reason whatsoever; or
- 25.2.2. any of the Equipment becomes or is to become obsolete;
- 25.3. Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the Contract immediately by written notice to the other if:
- 25.3.1. the other Party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment;
- 25.3.2. the other Party has committed a material breach of this Contract which is incapable of remedy;
- 25.3.3. the other Party commits a material breach of any of the terms of the Contract and fails to remedy that breach (if such breach is remediable) within 28 days of that Party being notified in writing of the breach;
- 25.3.4. if the other Party has a receiver, liquidator or administrator appointed, is the subject of bankruptcy proceedings, ceases to trade, passes a resolution for or is the subject of a winding up order (except for the purpose of a solvent amalgamation or reconstruction), makes any composition or arrangement with creditors or is unable to pay debt as and when they fall due; or 25.3.5. the Services are being used in an unauthorised or illegal manner.
- 25.4. On termination of the Contract for any reason:

- 25.4.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt
- 25.4.2. the Customer shall within fourteen (14) days of such termination return all of the Equipment and Deliverables. If the Customer fails to do so, the Supplier may enter the Sites and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping; and
- 25.4.3. On termination of the Contract (however arising), the clauses 5, 20, 21, 22, and 34 and 35 shall survive and continue in full force and effect.

26. Service Level Variation

- 26.1. The Supplier may on not less than 30 days notice, vary or replace any Service Level Agreement, provided that such variation or replacement does not materially adversely change the Services.
- 26.2. For the purposes of clause 26.1, the publication of any new version or replacement of the Service Level Agreement on the Website shall be deemed to be notice in accordance with clause 30.1.

27. Dispute Resolution

- 27.1. If any genuine dispute arises between the Parties, each Party shall use its reasonable endeavours to settle such dispute in accordance with the following procedures:
- 27.1.1. any dispute which has not been settled within five (5) Business Days of the matter being raised, may be escalated by either Party to the director(s) of the other Party; 27.1.2. the director(s) shall have ten (10) Business Days within which to resolve the dispute.
- 27.2. If a dispute is not resolved after the procedure set out in clause 27.1 has been followed, then either Party may refer the dispute to a mediator:
- 27.2.1. the mediator will be appointed by agreement of the Parties or, in the event of a failure to agree within three (3) Business Days of a proposal by one Party, the mediator will be appointed by the UK Centre for Dispute Resolution (CEDR);
- 27.2.1.1. within 14 days of the appointment of the mediator, the Parties will meet with the mediator in order to agree the procedure to be adopted for the negotiations;
- 27.2.1.2. all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings;
- 27.2.1.3. if the Parties reach agreement on the resolution of the dispute the agreement will be reduced to writing and once signed by the Parties will be binding on them; and 27.2.1.4. if the Parties fail to reach agreement within 2 months of the mediator being appointed, the dispute resolution procedure under this clause 27 shall be deemed exhausted.
- 27.3. Nothing in this clause 27 shall prevent either Party commencing legal proceedings against the other Party or applying for injunctive relief.

28. No Partnership or Agency

- Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, nor constitute any Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.

29. Rights of Third Parties

- A person who is not a party to the Contract shall not have any rights under or in connection with it.

30. Notices

- 30.1. Save in respect of clause 25, notices served under this Contract shall be in writing and shall be delivered personally or sent by first class post, fax or email to the addresses set out in the Order Proposal or Additional Order or such other address as otherwise notified by either Party to the other in writing.
- 30.2. Notice given in accordance with clause 30.1 shall be deemed to have been given immediately if delivered personally or if given by e-mail or fax prior to 4 pm on a working day and otherwise on the next working day. Notice given by first class post will be deemed to have been given two Business Days after the date of posting.
- 30.3. All notices served in accordance with clause 25 shall be in writing, sent by first class post and will be deemed to have been given two Business Days after the date of posting.

31. Variation

- 31.1. The Supplier may, upon the provision of one month's written notice where possible, change the Services and these Terms, provided that such changes do not affect the nature or quality of the Services.
- 31.2. The Customer acknowledges that the Supplier may need to make changes to the Services in accordance with clause 31.1 as a result of any amendments to the regulatory framework governing the provision of the Services.
- 31.3. Except as expressly set out in these Terms, no variation to the Contract shall be effective unless it is agreed by the Supplier. At the Suppliers discretion, a variation of the Contract may be made through the creation of an additional document, in manuscript on the Order Proposal or via an Additional Order.

32. Waiver

- 32.1. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by either Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that right or remedy.

33. Severance

- 33.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 33 shall not affect the validity and enforceability of the rest of the Contract.

34. Entire Agreement

- 34.1. The Contract constitutes the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.
- 34.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

35. Governing Law and Jurisdiction

- 35.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 35.2. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).