

MASTER TERMS AND CONDITIONS OF CONTRACT (“Conditions”)

These terms and conditions apply to the following:

Company Name	Company Number
TELAPPLIANT LIMITED	04632756
CONNEXIONS (GROUP) LIMITED	03647785
VOICE 2 VOICE LIMITED	04785166

YOUR SUCCESS OUR SOLUTIONS



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Telappliant Ltd
3 Harbour Exchange Square
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Company Registration No. 04632756 | Registered in England and Wales

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1. PURPOSE OF THESE CONDITIONS

- 1.1. The purpose of these Conditions is to establish the general terms and conditions applicable to services and/or goods to be rendered or supplied by the Company to the Client from time to time.
- 1.2. The parties shall enter into one or more agreements for the provision of Services (as defined separately in Service Agreements or within an Order Form) describing the responsibilities and obligations specific to the applicable services.

2. DEFINITIONS & INTERPRETATIONS

2.1. Definitions

In these Conditions, and any Contract (as defined below), the following definitions shall apply unless the context requires otherwise.

"Agent" means an appointed business partner or sub-contractor of the Company.

"Authorised Representative" means, in respect of each party, the person identified as such in the Quotation Form or the Order Form, or such other person as may be notified in writing by a party from time to time to the other party.

"Authority" means OFCOM or any other relevant regulating authority which has the right to frame Guidelines for the Services.

"Business Day" means any day, other than a Saturday, a Sunday or a public holiday in England, when the banks are open for business in London.

"Client" means the entity identified as such in the Order Form.

"Company" means the supplier of the Services and/or Goods identified in the Order Form being either Telappliant Limited, a company incorporated under the laws of England & Wales with registration no. 04632756 and whose registered office is at 3 Harbour Exchange, London, E14 9GE, or one of its Group Companies.

"Company Equipment" means any equipment (including any software on it) which is used by the Company to provide the Services (including any such equipment on the Client's premises) the ownership of which vests with the Company, any of its Group Companies or its third party suppliers.

"Contract" means the contract between the Company and the Client for the supply of Services and/or Goods in accordance with these Conditions comprising these Conditions, an Order Form and the Service Agreement(s) describing the responsibilities and obligations specific to the applicable Services, and including for the avoidance of doubt contracts formed via the Client's submission of a request for Services via the Company's online portal and the Company's acceptance of the same.

"Contract Start Date" means the date on which the Contract between the Company and the Client becomes effective. For new contracts, unless otherwise specified in the applicable Service Agreement(s) or Order Form, the Contract Start Date shall be the date when the final service, as specified in the applicable quotation or Service Agreement(s), is fully provisioned and live. Any services activated or provisioned prior to this date will be billed from their respective provisioning dates.

"Contract Manager" bears the meaning given in condition 5.4.1.

"Data Protection Legislation" means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European

Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;

“Deliverables” means all documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation the Services in any form, including computer programs, data, reports and specifications (including drafts).

“Effective Date” bears the meaning given in condition 3.2.

“Fees” means the fees payable by the Client for the supply of Services as set out in the Order Form and/or the relevant Service Agreement.

“Goods” means the goods (or any part of them), if any, set out in the Order Form.

“Group” means, in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“Group Company” means, in relation to a company, any member of its Group, and **“Group Companies”** shall be interpreted accordingly.

“Guidelines” means any guidelines, rules or regulations made by any Authority that are applicable to the Services.

“Initial Term” means the initial period (starting on and including the Service Start Date) during which the Company is to provide the Services to the Client and is that period specified as such in the Order Form or the Service Agreement or on the Company’s online portal (where the Client is permitted to order or provision services by this means), as the case may be, or, if none is specified, a period of 12 months starting on and including the Service Start Date. Where more than one Service is provided pursuant to an Order Form, the Initial Term will start on the Service Start Date of the last of the Services to be made available for use by the Client.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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.

“Order Form” means the Client’s order for the Services and/or the Goods as set out in an order form (in the Company’s prescribed form) completed by the Client or the Client’s written acceptance of a Quotation Form, as the case may be. “Order Form” shall be deemed to include the Client’s order for Services and/or Goods placed by the Client via the Company’s online portal (where the Client is permitted to order or provision services by this means).

“Pre-existing Materials” means all documents, information and materials provided by the Company relating to the Services which existed prior to the Effective Date, including computer programs, data, reports and specifications.

“Quotation Form” or “Quotation Document” means the written quotation that Company provides to Client that lists the services, the duration of their provision, and/or the Goods, and the prices applicable thereto.

“Renewal Term” means the further period (following the Initial Term or another Renewal Term) during which the Company is to provide the Services to the Client and is that period specified as such in the

Order Form or the Service Agreement or on the Company's online portal (where the Client is permitted to order or provision services by this means), as the case may be, or, if none is specified, a period of twelve months commencing on and including the day immediately following the last day of the Initial Term or the previous Renewal Term, as the context requires.

"Service Agreement" means the written agreement which describes or specifies the Services and contains additional terms particular to those Services.

"Service Levels" means the performance standards set out in the Service Agreement in accordance with which the Company is to provide the Services.

"Service Start Date" means the date on which Company first makes a Service available for use by the Client.

"Services" means the services, including the Deliverables, supplied by the Company to the Client as set out in the Order Form and the Service Agreement.

"Site" means the premises at which the Company agrees to provide the Services to the Client as specified in the Order Form, or any other location as may be agreed by the parties in writing from time to time.

"Term" means the Initial Term together with any Renewal Term.

"Unforeseen Event" bears the meaning given in condition 17.2.1.

2.2. Interpretation

The following rules of interpretation shall apply in these Conditions (and any Contract made under or incorporating them):

- 2.2.1. condition, clause and paragraph headings are for ease of reference only and shall not affect interpretation;
- 2.2.2. a reference to a condition is to a condition of these Conditions;
- 2.2.3. a reference to one gender includes any other gender;
- 2.2.4. words in the plural shall include the singular and likewise the other way around;
- 2.2.5. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2.6. a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 2.2.7. if there is a conflict between these Conditions and the terms of a Service Agreement or other documents applicable to the Contract, the following order of precedence shall apply and the document higher in the order of precedence shall prevail in respect of such conflict:
 - a) Order Form;
 - b) Service Agreement;
 - c) these Conditions.
- 2.2.8. where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them; and

2.2.9. any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

3. BASIS OF CONTRACT

- 3.1. The Order Form constitutes an offer by the Client to purchase Services and/or the Goods in accordance with these Conditions and the terms of the relevant Service Agreement. For the avoidance of doubt, these Conditions and the terms of the relevant Service Agreement shall apply to the supply of Goods and Services ordered or provisioned by the Client via a representative Company sales agent or via the Company's online portal (where the Client is permitted to order or provision services by this means).
- 3.2. The Order Form shall only be deemed to be accepted when the Company issues written acceptance of the Order Form or the Company starts providing the Services at which point and on which date the Contract shall come into existence (the "**Effective Date**").
- 3.3. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 3.4. Subject to condition 3.5, any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues, brochures or websites, are issued or published for the sole purpose of giving an approximate idea of the Services or the Goods described in them and they shall not form part of the Contract or have any contractual force.
- 3.5. For particular Services or Goods, the Company may publish the description applicable for that Service or those Goods on the Company's website and, in such circumstances, the Company may incorporate a URL to that description in the relevant Service Agreement or Order Form.
- 3.6. These Conditions and the relevant Service Agreement apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing or (to the fullest extent permitted by law) which may be implied or incorporated into the Contract by statute or at common law.
- 3.7. Any Quotation Form issued, or quotation given by the Company shall not constitute an offer and is only valid for a period of 30 (thirty) days from its date of issue.
- 3.8. The Company reserves the right to invoice the Client for any administration charges it incurs as a result of the Client providing a materially incorrect or incomplete Order.
- 3.9. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4. TERM

- 4.1. The Company shall start to provide the Services to the Client on the first day of the Initial Term.
- 4.2. The Company shall continue to provide the Services for the Initial Term unless the Contract is terminated earlier in accordance with condition 0. Subject to condition 4.3, the term of the Contract shall automatically extend for the Renewal Term at the end of the Initial Term and at the end of each Renewal Term, unless the Client gives written notice to the Company 30 (thirty) days before the end of the Initial Term or the relevant Renewal Term, to terminate the Contract at the end of the Initial Term or the relevant Renewal Term, as the case may be.
- 4.3. Where the Order Form expressly provides that automatic renewal of the Contract does not apply or the Client is a residential or small business customer (with 10 or fewer employees), unless the Client gives written notice in accordance with condition 4.2 to terminate the Contract at the end of the Initial

Term, the term of the Contract shall continue thereafter unless and until the Client gives not less than 30 (thirty) days written notice to the Company to terminate the Contract expiring at any time after expiry of the Initial Term (or such other period of notice as may be specified on the Order Form).

- 4.4. In circumstances where the Services comprise of more than one element or Sites, the Initial Term shall run from the Service Start Date of the last Service element/Site to be delivered ready for service or the solution as a whole.

5. SERVICES

- 5.1. The Company shall provide the Services to the Client on the terms and conditions of the Contract.

5.2. Client obligations and Use of Services

The Client shall:

- 5.2.1. provide, for Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises (or any premises of an end user), office accommodation, data and other facilities as reasonably required by the Company in order to supply the Services, including to maintain, repair, alter, modify or adjust the Company Equipment, and such access shall be within the Client's normal business hours unless agreed otherwise, and the Client shall not prevent or delay the Company carrying out maintenance work;
- 5.2.2. be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, and without prejudice to the generality of the foregoing, the Client shall:
- a) provide any electricity and telecommunications connection points required by the Company at the Site in connection with the Services;
 - b) (save to the extent that the same is dealt with directly as between the Company and any landlord in respect of multi-tenanted buildings) provide any openings in buildings on the Site which are required to enable the Company to install the Services; and
 - c) provide any internal cabling required between the Company Equipment and the Client's equipment;
 - d) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
 - e) ensure that all its equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and is technically compatible with them, and conforms to all relevant United Kingdom standards or requirements (and the Company reserves the right to disconnect any Client equipment which does not comply with this condition or to require the Client to do so);
 - f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services before the date on which the Services are to start;
 - g) comply with, and where applicable procure that its customers comply with, the Company's reasonable instructions in connection with the use of the Services and the Company's policies in force from time to time (including any acceptable use policy of the Company as may apply in respect of a Service); and
- 5.2.2.g.1. without prejudice to condition 5.2.1 (f), not use or permit the Services to be used:
- 5.2.2.g.2. in breach of any applicable law or for any unlawful purpose or in such a way as to infringe a third party's rights;

- 5.2.2.g.3. to send, communicate, knowingly receive, upload, download or use any material or make any calls which are offensive, abusive, defamatory, obscene, menacing, which cause annoyance or needless anxiety or which are intended to deceive;
 - 5.2.2.g.4. in such a way as may cause interruption, interference, impairment or degradation of any communications system used to provide the Services or services provided by the Company to any of its other customers;
 - h) ensure that the network used to deliver the Services provided by the Company has the bandwidth and quality required to deliver such Services.
- 5.2.3. The Client must comply with the Company's security policy in force from time to time (available at <http://www.telappliant.com/assets/Uploads/telappliant-password-security-policy.pdf> or such other place as may be notified by the Company from time to time), including the Company's guidelines in respect of passwords and its recommendations for the adoption of security measures in respect of the Client's system or apparatus used to access or connect to the Services (including for example by the use of a firewall). The Company shall not be liable to the Client under the Contract in respect of any loss or damage suffered by the Client or its customers as a result of the Client's failure to follow any such guidelines or recommendations. The Client is responsible for and shall pay all Fees in respect of the Services whether the Services are used by the Client or its customers or someone else.
 - 5.2.4. The Company shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the IT and telecommunications sectors in the United Kingdom.
 - 5.2.5. The Company shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Service Agreements or Order Form.
 - 5.2.6. The Company shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
 - 5.2.7. The Company may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
 - 5.2.8. The Company shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.
 - 5.2.9. The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises and that have been communicated to it under condition 5.2(c), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
 - 5.2.10. The Client will be charged for each aborted Site survey or installation visit and any costs which the Company incurs from its third-party providers, where the aborted visit and/or costs are as a result of the Client's failure to provide access as arranged or its other failure to cooperate.
 - 5.2.11. Where the Company has been unable to start or finish installation by any agreed date by reason of the Client's failure to provide any information reasonably required or the Client's other failure to cooperate, the Company may invoice the Client for its full installation or set-up charges as if the installation had been completed and the Client agrees to reimburse to the Company any third party provider costs which the Company incurs as a result of any such delay.

5.2.12. The Client hereby agrees to indemnify and hold the Company harmless at all times from any claim suffered or incurred by the Company (including all losses, damages, reasonable costs and expenses of any kind suffered or incurred directly by the Company in connection with such a claim for any amounts awarded against the Company in judgment or settlement of any such claim, provided that: (a) the Client is given prompt notice of any such claim; (b) the Company provides reasonable co-operation to the Client in the defence and/or settlement of such claim, at the Client's expense; and (c) the Client is given sole authority to defend or settle the claim.) by virtue of the Client's misuse of the Services or the Company Equipment, and any charges levied by its third party providers to which the Company is exposed as a result of the Client's actions.

5.3. **Company Equipment**

5.3.1. In respect of any Company Equipment installed at the Site, the Client shall:

- a) ensure that the Company Equipment is kept under suitable conditions (including suitable electrical power) in accordance with the relevant instructions and standards and follow any operating instructions as the Company may give from time to time;
- b) not permit any equipment or apparatus to be attached to Company Equipment except as may be approved by the Company from time to time;
- c) notify the Company promptly if it discovers the Company Equipment is operating incorrectly in accordance with the Company's fault reporting procedures;
- d) at all reasonable times permit full and free access to the Site and to the Company Equipment to the Company, its employees, contractors and agents, and provide them with adequate and safe working space and any facilities as are reasonably required to enable the Company to perform corrective maintenance services while at the Site (as the Company deems appropriate), including for purposes of disconnecting and removing Company Equipment after the Contract has ended;
- e) keep the Company Equipment at the Site, and not move it from the Site without the prior written approval of the Company;
- f) not allow any person other than the Company, or the Company's employees, contractors or agents, to maintain, repair, alter, modify or adjust the Company Equipment without the prior written approval of the Company;
- g) not sell, transfer, dispose of, let, mortgage or charge the Company Equipment or allow any distress, seizure or execution of or against it or otherwise do anything prejudicial to the Company's or the owner's rights in it; and
- h) return the Company Equipment to the Company for maintenance as may be requested by the Company.

5.3.2. The Company Equipment will at all times belong to the Company.

5.3.3. The Client shall be responsible for all loss or destruction of, or damage to, the Company Equipment whilst it is situated on the Site (save for loss, damage or destruction caused by the Company's actions or the actions of its employees, contractors or agents) and will ensure that its insurance covers Company Equipment whilst situated on the Site(s) to its full replacement value.

5.3.4. The Company may modify or replace the Company Equipment from time to time provided that any such modification or replacement does not materially impair performance of the Services.

5.4. **Key Personnel**

5.4.1. Each party shall appoint a contract manager ("**Contract Manager**") who shall have authority contractually to bind that party on all matters relating to the Services and shall notify the other party of the identity of and contact details for such Contract Manager. Each party shall use reasonable endeavours to ensure that the same person acts as the Contract Manager for that party throughout the Term, but may replace them from time to time where reasonably necessary in the interests of that party's business.

5.4.2. Each party warrants that its Authorised Representative has authority contractually to bind it on all matters relating to the Contract.

5.4.3. A party's Contract Manager may be the same person as its Authorised Representative.

5.5. **Account Management**

5.5.1. During the Term, the parties' respective Contract Managers shall meet from time to time to review the performance of the Contract. The parties shall mutually agree the timing and location of such meetings but in the absence of agreement the Company's position shall prevail.

5.5.2. If a Contract Manager is not available to attend a meeting held under condition 5.5.1 that party's Authorised Representative shall attend in their place.

5.6. **Assignment and Subcontractors**

5.6.1. The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.

5.6.2. The Client shall not assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under Contract without the prior written consent of the Company.

5.7. **Services to and from competitors**

5.7.1. The Client agrees and acknowledges that the Company may provide similar services to the Services to competitors of the Client.

5.7.2. The Company agree and acknowledges that the Client is free to procure services from the Company's competitors provided that such services do not restrict or preclude performance of the Services by the Company and subject to the provisions of condition 7.2.

5.8. **Services provided on trial basis**

5.8.1. Where the Company provides Services to the Client on a trial basis, the Client may use such Services for purposes of evaluation for up to 30 days from the date such Services begin to be provided or are first made available by the Company for use by the Client or for such other period as may be agreed in writing by the Company (including any trial period as may be specified on an Order Form).

5.8.2. If the Client decides to use any such Services after expiry of the trial period, it must place an Order for them, and the Client shall be liable for the Company's Fees in respect of such Services

for the period after expiry of the trial period at the rate specified in the Order Form or, where no Order Form has been entered into, at the Company's standard rates from time to time.

- 5.8.3. Services provided on a trial basis are provided "as is" and notwithstanding the other provisions of the Service Agreement the Company does not provide any technical support or offer any service level commitments in respect of them and disclaims all liability arising out of or in connection with such Services or their use.

6. SERVICE LEVELS

6.1. Quality

- 6.1.1. The Company shall supply the Services to the Client materially in accordance with the Service Agreement (and any specification provided in writing by the Company referred to in it).
- 6.1.2. The Company shall use its reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.1.3. The Company warrants to the Client that: (a) the Services will be provided using reasonable care and skill; (b) where the Company has agreed a Service Level, it shall use reasonable endeavours to ensure the standard of performance meets or exceeds the Service Levels specified in the relevant Service Agreement; and (c) where the parties have not agreed a Service Level, the Company will use reasonable endeavours to provide Services at a level that meet or exceed generally accepted industry standards.
- 6.1.4. Where the Company has agreed a Service Level in respect of a Service, where the standard of performance falls below the Service Level, subject to the provisions of the relevant Service Agreement the Client may be entitled to Service Credits as specified within the corresponding Service Agreement. Where Service Credits are available to the Client in respect of any failure to meet Service Levels or in respect of any Service failure, these shall be the Client's sole and exclusive remedy in respect thereof.
- 6.1.5. Without prejudice to any right or remedy which the Company may have (whether under the relevant Contract or otherwise), the Company will not be liable to the Client in respect of any failure to meet Service Levels in respect of any period during which any Fees or other amounts payable to the Company are overdue (whether or not payable pursuant to that Contract) or the Client is otherwise in breach of any Contract.

6.2. Reporting

The Company shall provide the Client with performance reports in a form and at time intervals determined by the Company acting reasonably.

6.3. Remedies

If the Company fails to meet the Service Levels, then, subject to conditions 6.1.4 and 6.4 and to any provisions of the relevant Service Agreement, the Client's sole remedies shall be to require the Company: (a) to complete the performance of the Services as near as commercially reasonably possible to the applicable Service Level; and (b) to use commercially reasonable efforts to carry out such additional work as is necessary, without charge to the Client, to correct the Company's failure.

6.4. Exclusions

The Company shall not be in breach of the Contract nor have any liability to the Client for failing to attain a particular Service Level if such breach or failure is due to:

- 6.4.1. planned maintenance or service change of which the Company has given the Client advance notice;
- 6.4.2. a failure of, or fault in, equipment not covered by the scope of the Service or of the Client's own equipment or network;
- 6.4.3. an Unforeseen Event (subject to the provisions of condition 17.2);
- 6.4.4. a negligent act or omission of the Client or its officers, employees or agents;
- 6.4.5. a negligent act or omission of a Client's third party contractor (other than the Company);
- 6.4.6. the Client's failure to follow the Company's reasonable instructions or preventive measures of which the Company has, in either case, previously given written notice to the Client as being necessary to attain or maintain the Service Levels; or
- 6.4.7. suspension of the Service where the Company is entitled to do so under the Contract;
- 6.4.8. where the provision of the Services is dependent on the availability of the internet and the connection of the Services to the internet and the Company is not responsible for providing such connectivity;
- 6.4.9. without prejudice to clause 6.4.8, the Company shall have no liability to the Client whatsoever for any failure to provide Hosted Voice Services in accordance with the Contract (including applicable Service Levels) to the extent that such failure is attributable to any deficiency in the chosen network or to any third party connectivity services including any third party IP connectivity network failure.

6.5. Supply of Goods

- 6.5.1. The Goods are described in the Company's catalogue. The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 6.5.2. The Company shall use its reasonable endeavours to meet any delivery dates specified in the Order Form or quoted for delivery, but any such dates shall be estimates only and time shall not be of the essence for delivery of the Goods.
- 6.5.3. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent caused by the Client's failure to provide adequate delivery instructions.
- 6.5.4. If the Client fails to accept or take delivery of the Goods within 10 Business Days of the Company notifying the Client that the Goods are ready, the Goods will be deemed to have been delivered at 9.00 am on the next Business Day thereafter and the Company shall store the Goods until delivery takes place, provided that if within 20 Business Days after the Company notified the Client that the Goods were ready for delivery the Client has not accepted delivery, the Company may resell the Goods and (after deducting reasonable selling costs) charge the Client for any shortfall below the price of the Goods.
- 6.5.5. The risk in the Goods shall pass to the Client on completion of delivery. Title to the Goods shall not pass to the Client until the Company has received payment in full (in cash or cleared funds) for the Goods. Until title to the Goods has passed to the Client, the Client shall:
 - 6.5.5.a.1. hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.5.5.a.2. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

6.5.5.a.3. notify the Company immediately if it becomes subject to any of the events listed in clause 15.1.4 to clause 15.1.10; and

6.5.5.a.4. give the Company such information relating to the Goods as the Company may require from time to time,

but the Client may use the Goods in the ordinary course of its business.

6.5.6. If before title to the Goods passes to the Client it becomes subject to any of the events listed in clause 15.1.4 to clause 15.1.10, or the Company reasonably believes that any such event is about to happen and notifies the Client accordingly, then (without limiting any other right or remedy the Company) may have, the Company may at any time require the Client to deliver up the Goods and, if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

6.5.7. Subject to clause 16.4, the Company offers no warranty or condition of any kind in respect of Goods supplied. However, to the extent it is permitted to do so under the relevant third party supplier terms of supply, the Company assigns to the Client the benefit of any rights which the Company may have under any warranties given by any third party supplier in respect of any Goods supplied by the Company, and the Company agrees to provide the Client with reasonable assistance (at the Client's sole cost and expense) to enforce any such rights.

6.5.8. Without prejudice to the other provisions of these Conditions, all conditions, warranties, undertakings, representations and other terms of any kind whatsoever, express or implied (whether by statute, common law or otherwise), in respect of the Goods are hereby excluded by the Company to the fullest extent permitted by law (including but not limited to all warranties or conditions implied by law concerning satisfactory quality, fitness for purpose or as to description) and save as expressly set out in clause 6.5.7 the Company shall have no obligation, duty or liability whatsoever to the Client in respect of the Goods.

7. CHANGES IN THE SCOPE

7.1. Change Control Procedure.

7.1.1. If either party wishes to change the scope or execution of the Services (a "**Change**"), it shall submit details of the Change to the other in writing. In either circumstance, the Company shall, within a reasonable time, provide a written estimate to the Client of: (a) the likely time required to implement the Change; (b) any necessary variations to the Fees arising from the Change; and (c) any other impact of the Change on the relevant Service Agreement or the Contract generally.

7.1.2. Any recommendation for a Change made by the Company shall remain valid for the Client's consideration for a period of 20 Business Days unless agreed otherwise in writing.

7.1.3. If the Client wishes the Company to proceed with the Change, the Company has no obligation to do so unless and until the parties have agreed the necessary variations to its Fees, the Services, and any other relevant terms of the Contract to take account of the Change and the Contract has been varied in accordance with condition 17.5.

7.1.4. Notwithstanding condition 7.1.3, the Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements or for technical or operational reasons or change any third party services procured by the Company in connection with the provision of the Services, provided that such changes do not materially affect the nature or scope of the Services or the Fees.

7.1.5. The Company may charge for the time it spends assessing a request for change from the Client on a time incurred basis at its then applicable rates.

7.2. **New Services**

7.2.1. The Company shall not be obliged to provide any new services to the Client unless: (a) both the parties have signed a written agreement varying the Contract or entered into a new Contract and, in either case, this shall include agreement as to the fees for such new services.

7.2.2. Without prejudice to condition 7.2.1, where the Client is permitted by the Company to order or provision new or additional Services via the Company's online portal (or by any other means), the Contract shall be deemed to be varied so as to include any such Services. Such new or additional Services shall be subject to any Initial Term and Renewal Term specified on the Company's online portal or in the relevant Service Agreement for such Services or, where not so specified, they will be subject to the default Initial Term and Renewal Term provided for in these Conditions. The fees for such new or additional Services shall be those set out in the Company's standard price list or rate card from time to time.

7.3. **Cooperation with Third Parties**

If the Client appoints a third party to provide services which may directly or indirectly impact on the Company's provision of the Services, the Company shall cooperate with such a third party subject to the following:

7.3.1. the Company shall not be obliged to disclose its Confidential Information to that third party unless the Client procures that that third party enters into binding confidentiality undertakings with the Company on terms no less onerous than those set out in the Contract; and

7.3.2. if the Company, acting reasonably, believes the third party's provision of the new service is likely to impact on the scope of the Services or require the Company to expend extra effort or materials, the parties shall agree any necessary changes to the Contract (including the Fees) in accordance with condition 7.1.

8. **INTELLECTUAL PROPERTY RIGHTS**

8.1. **Rights in Deliverables and Pre-existing Materials.**

As between the Client and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials and all Intellectual Property Rights otherwise arising out of performance of the Contract (including any such rights in any software provided by the Company in connection with a Service) shall be owned by the Company. Subject to condition 8.2, the Company licenses all such rights to the Client free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If the Contract is terminated the licence granted under this condition 8.1 shall automatically terminate. If the Service provides the Client with software which is licensed by third parties who require the Client to accept their terms of use, the Client must adhere to those terms. Except as permitted by applicable law or as expressly permitted by the Contract, the Client agrees not to copy, decompile, disassemble or modify any software provided to the Client or permit anyone else to do so.

8.2. **Third Party Rights in Pre-Existing Materials.**

8.2.1. The Client acknowledges that, where the Company does not own any of the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Client, and the Client acknowledges and accepts that its use of any such Pre-existing Materials shall be subject to the licence terms of the relevant licensor(s).

8.2.2. The Company shall defend the Client against any claim arising as a result of the Company's failure to obtain a licence required under condition 8.2.1, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that: (a) the Company is given prompt notice of any such claim; (b) the Client provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and (c) the Company is given sole authority to defend or settle the claim.

9. CHARGES AND PAYMENTS

9.1. Fees

9.1.1. In consideration of provision of the Services by the Company, the Client shall pay the Company the Fees, as varied from time to time in accordance with the terms of the Contract.

9.1.2. The price for Goods shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery.

9.2. Additional Fees for Changes in Scope

The Client shall pay such additional fees to the Company as the parties agree pursuant to a change in the scope under condition 7.

9.3. Fees - All Inclusive

Unless otherwise indicated, the Fees are inclusive of (a) all costs and expenses including hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services and (b) in the case of Goods, inclusive of all costs and charges of packaging, insurance and transport of the Goods.

9.4. Taxes and Duties

The Fees are exclusive of all taxes (including Value Added Tax), levies, duties, fees or charges. All such taxes, levies, duties, fees or charges that pertain to the Services and/or the Goods shall be shown separately in the invoices raised under condition 9.5.

9.5. Invoicing

9.5.1. The Company shall invoice the Client in advance for the Fees together with any applicable taxes, levies, duties, fees or charges at the appropriate rate. Each invoice shall describe the Services and/or the Goods to be provided and any applicable taxes, levies, duties, fees or charges.

9.5.2. The Client shall pay each invoice submitted to it by the Company in full and in cleared funds, without any set-off, counterclaim, deduction or withholding except as required by law, within 30 days of receipt to a bank account nominated in writing by the Company.

9.5.3. Billing disputes must be notified within 10 Business Days of the date of invoice.

9.5.4. If at any time the Client fails to meet the standard of creditworthiness deemed acceptable by the Company from time to time, the Company may:

- a) require the Client to make such regular instalment payments in advance on account of any future Fees as the Company shall reasonably deem necessary; and
- b) impose such other measures on the Client's right to use the Services as the Company shall reasonably deem necessary.

In the event that the Client does not comply with condition 9.5.4(a), the Company may terminate the Contract immediately.

9.6. Pro-ration

9.6.1. The Company shall calculate all periodic Fees on a calendar month basis and these will be pro-rated for any partial month, unless otherwise agreed in writing.

9.6.2. In circumstances where the Services comprise of more than one element and the Fees are structured accordingly, the Fees in respect of any particular element will become payable with effect from the Service Start Date for that particular element notwithstanding that other elements may not yet have reached their particular Service Start Date.

9.7. Non-Payment

Without prejudice to any other right or remedy that it may have, if the Client fails to pay any amount payable by it under the Contract by the due date for payment, the Company may:

9.7.1. charge interest on such sum from the due date for payment (as provided for in condition 9.5.2) at the annual rate of 4% above the base rate from time to time of Royal Bank of Scotland Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment or, in the alternative, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and, in either case, the Client shall pay the interest (together with the sum due) immediately on demand; and

9.7.2. having escalated the issue of non-payment to the Client's Contract Manager, suspend all Services until payment has been made in full.

9.8. Change in Rates

9.8.1. Subject to condition 9.8.2, the parties agree that the Company may review and increase the Fees in line with the Retail Price Index (RPI), provided that the Fees cannot be increased more than once in any 12-month period. The Company shall use its reasonable endeavours to give the Client written notice of any such increase one month before the proposed date of that increase. If such increase is not acceptable to the Client, it may, within 14 days of such notice being received or deemed to have been received in accordance with condition 17.4, terminate the Contract by giving 30 days' prior written notice to the Company.

9.8.2. The Client acknowledges and agrees that any call rates provided for under a Service Agreement are not controlled by the Company and those rates may change. In these circumstances the Company will give 7 days notice to the Client. The Client is advised to follow the Company's web site for the latest applicable rates. All such call rates will be billed in accordance with the terms of the relevant Service Agreement. The Client shall not be entitled to terminate the Contract under condition 9.8.1 by reason of any increase in call rates made by the Company further to changes to rates charged by its third-party providers for a Service.

9.8.3. The parties agree that the Company may review and increase the Fees where it is required to do so by law or by any governmental or other regulatory authority. The Company will give the Client as much notice of any such increase as is reasonably practicable in the circumstances.

9.9. Site survey and Excess Construction Charges

Availability of certain Services, or the Fees payable in respect of them, may be subject to Site survey. Where this is the case, following the survey the Company may either (where applicable) confirm a date(s) for commencement of Services later than previously advised and/or increase the Fees (including where Excess Construction Charges will apply) or, exceptionally, withdraw its offer to provide the Services. The Company will give the Client written notice of the same as soon as reasonably practicable. If any such delay in implementation or increase in Fees is not acceptable to the Client, it may, within 2

Business Days of the Company's notice (or such longer period as may be advised in the Company's notice), terminate the Contract or the affected Service by written notice to the Company. If within such period the Company does not receive from the Client either notice of termination or confirmation of the Client's acceptance, the Company may terminate the Contract without penalty and charge the Client for any abortive work done or costs incurred by the Company in installing and provisioning the Services to date of termination.

9.10. **Effect of Termination**

9.10.1. All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

9.10.2. In the event that the Client cancels or terminates a Service or the Contract before the end of the Initial Term or the Renewal Term (as the case may be) otherwise than pursuant to condition 9.8.1, the Company may at its discretion claim from the Client, and the Client shall pay:

- a) any remaining Fees which would have been due under the Contract for the terminated Service(s) from the date of termination to the end of the Initial Term or the Renewal Term (as the case may be); and
- b) where pursuant to a promotional offer made by the Company any Service is provided "free of charge" or the Fees in respect of it are discounted for any period (**Promotional Period**), the Fees (at the Company's standard rates) which would have been payable for the relevant Service for the Promotional Period or (in the case of discounted Fees) the aggregate amount of the discount given;

and the Company may submit an invoice in respect thereof which shall be payable by the Client immediately on receipt.

10. **DATA AND REPORTS**

10.1. **Provision of data**

The Client shall provide the Company with any data or information the Company may reasonably require to enable the Company to provide Services in accordance with the terms of the Contract. The parties shall agree in good faith the form and timescales for the provision of such data or information. All of the Client's data and information shall remain the exclusive property of the Client.

11. **CONFIDENTIALITY**

11.1. For the purposes of this condition 0,

"**Confidential Information**" means confidential information (however recorded, preserved or disclosed) disclosed by a party to the other party including but not limited to any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans of the Disclosing Party or any member of its group of companies; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party or any member of its group of companies, but not including any information that: (a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party in breach of this agreement; or (b) was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party; (c) is developed by or for the Receiving Party independently of the

information disclosed by the Disclosing Party; or (d) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;

“Disclosing Party” means a party to the Contract which discloses or makes available directly or indirectly Confidential Information; and

“Receiving Party” means a party to the Contract which receives or obtains directly or indirectly Confidential Information.

- 11.2. The Receiving Party shall keep in strict confidence all Confidential Information disclosed to it by the Disclosing Party, its employees, agents or subcontractors.
- 11.3. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 11.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this condition 11.4, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.
- 11.5. The Receiving Party may, provided that the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office (or any successor body) without first notifying the Disclosing Party of such disclosure.
- 11.6. All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, Intellectual Property Rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in the Contract.
- 11.7. The Receiving Party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this condition 0. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this condition 0.
- 11.8. The obligations of confidentiality in this condition 0 shall survive termination or expiry of the Contract and shall endure for 12 months immediately following such termination or expiration.

12. DATA PROTECTION

- 12.1. In this Clause 12 and in the Agreement,
“personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meanings defined in the Data Protection Legislation.
- 12.2. Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 12 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.
- 12.3. The Client and the Company (Service Provider) acknowledge that for the purposes of the Data Protection Act 1998, the Client is the “Data Controller” and the Company is the “Data Processor”, (where “controller” and “processor” have the meanings as defined in the Data Protection Legislation).

- 12.4. The Service Provider will only process the personal data to the extent necessary for the purposes of the product or services being provided to the Client. The Service Provider shall take such reasonable technical and operational security measures as required to protect the personal data against unlawful processing and against accidental loss, destruction, damage, alteration and disclosure and to enable it to process the personal data in compliance with the obligations as set out in the Data Protection Legislation.
- 12.5. The Client agrees that the Service Provider, under its contracts with third party service providers, may be required to pass certain client details to approved third-party suppliers in order to provide the contracted product or service to the Client. The Client gives consent to the Service Provider to transfer personal data to a third-party supplier where this is reasonably required for the Service Provider to fulfil its contractual obligations to the Client under this Agreement. Where this clause applies, the Service Provider shall use reasonable endeavours to ensure that the third-party supplier complies with the data protection obligations of the Service Provider as set out in this Agreement.
- 12.6. The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions.
- 12.7. The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these terms and conditions:
 - 12.7.1. Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
 - 12.7.2. Ensure that it has in place suitable technical and organisational measures to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures.
 - 12.7.3. Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and
 - 12.7.4. Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - a) The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - b) Affected data subjects have enforceable rights and effective legal remedies;
 - c) The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - d) The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 12.8. Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 12.9. Notify the Data Controller without undue delay of a personal data breach;

- 12.10. On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and
- 12.11. Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 12, and on reasonable notice during Normal Business Hours, allow for audits by the Data Controller and/or any party designated by the Data Controller, such audit rights to be exercised by the Client not more than once in any calendar year during the term of this Agreement and the Data Controller must abide by all safety and security rules in operation at the relevant premises from time to time and/or notified to them by the Service Provider.
- 12.12. Subject to the terms of this Clause 12.12, the Client consents to the Service Provider appointing subcontractors as third-party processors of Personal Data under this Agreement. The Service Provider confirms that it has entered into, or (as the case may be), will enter into, with each such third-party processor a written agreement incorporating terms which are substantially similar to those set out in this Clause 12. The Service Provider shall inform the Client of any intended changes, following the date of this Agreement, concerning the addition or the replacement of any third-party processor and shall not make such changes without the Client's consent. As between the Client and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 12.12.
- 12.13. Either Party may, at any time, and on at least 30 calendar days' notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.
- 12.14. **Warranties**
- 12.14.1. Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 12.14.2. The Company warrants that, having regard to the state of technological development and the cost of implementing any measures, it will: (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to: (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and(ii) the nature of the data to be protected; and (b) take reasonable steps to ensure compliance with those measures.
- 12.15. **Data Subjects**
- The Client acknowledges that the Company is reliant on the Client for direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Client's instructions.
- 12.16. **Credit checks**
- The Client acknowledges and agrees that the Company may submit details of the Client (including its name, address, details of its officers, and payment records) to a credit reference agency for the purpose of determining its credit-worthiness. The Client agrees to co-operate to the fullest extent possible with any reasonable request made in relation to a credit check.

13. FURTHER WARRANTIES

As at the Effective Date, the Company and the Client each represent, warrant and covenant for the benefit of the other, the following:

- 13.1. it has taken all necessary action and has all requisite power and authority to enter into and perform the Contract in accordance with its terms;
- 13.2. compliance with the terms of the Contract shall not breach or constitute a default under: (a) any agreement or instrument to which it is a party or by which it is bound; or (b) any order, judgment, decree or other restriction applicable to the warranting party; and
- 13.3. it agrees to comply, and to reasonably assist the other in complying, with all applicable laws, regulations and ordinances as they apply to the Contract.

14. DISPUTE RESOLUTION

If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a “**Dispute**”) then, except as expressly provided in the Contract, the Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

14.1. Negotiate in good faith

14.1.1. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a “**Dispute Notice**”), together with relevant supporting documentation. On service of the Dispute Notice, the parties’ respective Authorised Representatives shall attempt in good faith to resolve the Dispute; and

14.1.2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, either party may initiate mediation in accordance with condition 14.2.

14.2. Mediation

14.2.1. The parties may attempt to settle any Dispute that remains unresolved under condition 14.1.2 by mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (“**ADR Notice**”) to the other party requesting a mediation. A copy of the request shall be sent to CEDR Solve, c/o CEDR, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU.

14.2.2. Any such mediation shall start not later than 28 days after the date of the ADR Notice.

14.2.3. The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings, nor shall anything in this condition 14.2 require a party to commence a mediation before commencing court proceedings.

14.3. Continued Performance

Subject to condition 9.7.2 and condition 15, both parties will continue to perform their respective duties and obligations under the Contract, while the parties seek to resolve the dispute, unless such obligations are lawfully terminated or expire.

15. TERMINATION

- 15.1. Without prejudice to any other rights or remedies which the Company may have, the Company may terminate the Contract without liability to the Client immediately on giving notice to the Client if:
- 15.1.1. the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 15.1.2. the Client commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Client being notified in writing of the breach;
 - 15.1.3. the Client repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 15.1.4. the Client suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 15.1.5. the Client commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors;
 - 15.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Client;
 - 15.1.7. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Client;
 - 15.1.8. a floating charge holder over the assets of the Client has become entitled to appoint, or has appointed, an administrative receiver;
 - 15.1.9. a person becomes entitled to appoint a receiver over the assets of the Client, or a receiver is appointed over the assets of the Client;
 - 15.1.10. a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 15.1.11. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.1.4 to condition 15.1.10 (inclusive); or
 - 15.1.12. the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 15.2. The Company may terminate the Contract without liability to the Client on giving 30 days' written notice to the Client if there is a change of control of the Client (within the meaning of section 1124 of the Corporation Tax Act 2010). If there is such a change of control of the Client, the Client shall give written notice to the Company of that change within 30 days of its occurrence and the Company may terminate the Contract in accordance with the previous sentence.
- 15.3. The Company may terminate the Contract for convenience by giving 6 months' advance written notice to the Client.

- 15.4. The Company may terminate the Contract or the affected Service(s) without liability to the Client on giving written notice to the Client:
- 15.4.1. if the Company or any of its suppliers in respect of the relevant Services are obliged to comply with an order or direction of any governmental or other regulatory authority which has the effect of requiring the Company to terminate the Contract or to cease providing the Services or any of them; or
 - 15.4.2. if any third-party service or supply which is necessary for the provision of a Service does not become available to the Company or ceases to be available to it or is terminated for any reason, whether at all or on appropriate terms (including as to quality), and no suitable replacement is available to the Company on commercially reasonable terms;
- and in each case the Company will give the Client such advance notice as it is reasonably able to do.
- 15.5. The Client may terminate the Contract on 30 days' notice: (a) in accordance with condition 4.2; or (b) if it does not accept a change to the Fees made in accordance with condition 9.8.
- 15.6. The Company may cease any Services provided free to the Client (including pursuant to any Company promotion) if it becomes apparent that the Client is not using such Services.
- 15.7. On termination of the Contract for any reason:
- 15.7.1. the Client shall pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable on receipt;
 - 15.7.2. where the Contract is terminated by the Company pursuant to condition 15.1 or 15.2, or is otherwise terminated before the end of the Initial Term or the Renewal Term (as applicable) for any reason other than the Company's fault or by the Client pursuant to conditions 4.2, 9.8.1, 9.9 or 17.2.3, the Client shall be liable to pay any remaining Fees which would have been due under the Contract from the date of termination to the end of the Initial Term or the Renewal Term (as the case may be), and the Company may submit an invoice in respect thereof which shall be payable by the Client immediately on receipt;
 - 15.7.3. the Client shall return all of the Pre-existing Materials and Deliverables and any Company Equipment provided to it in connection with the Contract. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;
 - 15.7.4. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination;
 - 15.7.5. will, for the sake of clarity, result in the termination of all Service Agreements in force at the time of such termination; and
 - 15.7.6. conditions which expressly or by implication have effect after termination shall continue in full force and effect, including the following conditions: condition 0 (Intellectual Property Rights), condition 0 (Confidentiality), condition 0 (Data Protection), condition 0 (Dispute Resolution), condition 15.10 (Limitation of liability), condition 17.4 (Notices) and condition 17.8 (Governing law, Jurisdiction).
- 15.8. Unless agreed otherwise, the Fees payable by the Client under condition 15.7.1 for Services supplied by the Company shall be calculated in proportion to the actual number of days that the Company supplied the Services and the number of days in the relevant billing cycle.

15.9. Without limiting its other rights or remedies, the Company may (without liability) suspend the supply of Services (or any of them) under the Contract or any other contract between the Client and the Company in the following circumstances:

- 15.9.1. the Client becomes subject to any of the events listed in condition 15.1.4 to condition 15.1.10 (inclusive) or the Company reasonably believes that the Client is about to become subject to any of them; or
- 15.9.2. the Company otherwise becomes entitled to terminate the Contract pursuant to condition 15.1; or
- 15.9.3. the Client is in breach of any restrictions on use of a Service contained in the relevant Service Agreement or these Conditions (including any as may be incorporated in the Company's acceptable use policy as updated from time to time) or any Guidelines or the Client commits an act of fraud in respect of a Service or otherwise misuses the Services, or the Company reasonably suspects the same; or
- 15.9.4. the Company is required to do so to comply with an order or direction or request of any governmental or other regulatory authority or any emergency services authority; or
- 15.9.5. for purposes of planned or emergency maintenance or repairs; or
- 15.9.6. to protect the integrity or security of the Company's network or any third-party network used in connection with the supply of a Service; or
- 15.9.7. if any third-party services used in connection with the provision of the Services are suspended; or
- 15.9.8. suspension is required for any other reason that is beyond Company's reasonable control;

and in the case of suspension pursuant to any of conditions 15.9.4 to 15.9.8 (inclusive) the Company will give the Client as much advance notice as is reasonably practicable in the circumstances. The Client shall continue to be liable to pay the Fees during such suspension (but without prejudice to any Service Credits for which the Client may be eligible during such suspension where such suspension is not pursuant to the Client's default). Where such suspension is due to the Client's default, the Client shall reimburse the Company any third party costs or expenses for which the Company is liable as a result of such suspension or recommencement of Services.

15.10. The Client authorises the Company to use its personal data and any information which it provided the Company with, in relation to the Contract in connection with any investigation of any suspected or alleged breach of the Contract or suspected compromise to the Company's or any third-party provider's network systems or security, including by disclosing it to any third party the Company considers has a legitimate interest in any such investigation or its outcome.

16. LIMITATION OF LIABILITY

16.1. This condition sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:

- 16.1.1. any breach of the Contract however arising;
- 16.1.2. any use made by the Client of the Services, the Deliverables, the Goods or any part of them; and
- 16.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

- 16.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 16.3. Nothing in the Contract limits or excludes the liability of the Company for:
- 16.3.1. death or personal injury resulting from its negligence;
 - 16.3.2. fraud or fraudulent misrepresentation;
 - 16.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
 - 16.3.4. defective products under the Consumer Protection Act 1987; or
 - 16.3.5. any other liability which may not be excluded at law.
- 16.4. Subject to condition 16.5 and condition 16.2:
- 16.4.1. the Company shall not under any circumstances whatever be liable for: (a) loss of profits; (b) loss of revenue; (c) loss of business; (d) depletion of goodwill and/or similar losses; (e) loss of anticipated savings; (f) loss of contract; (g) loss or corruption of data or information; and (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 16.4.2. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the provision of a Service during a Contract Year shall in all circumstances be limited to an amount equal to 125% of the aggregate Fees paid by the Client to the Company for that Service in that Contract Year;
 - 16.4.3. without prejudice to clause 16.4.2 above, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Contract or otherwise under or in connection with the Contract shall in all circumstances be limited to an amount equal to 125% of the aggregate Fees paid by the Client to the Company pursuant to the Contract.
- 16.5. The Client shall be liable to pay to the Company, on demand, all reasonable pre-approved costs, charges or losses sustained or incurred by the Company (including loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, gross negligence, wilful misconduct, subject to the Company confirming such costs, charges and losses to the Client in writing.
- 16.6. Subject to clause 16.3, any claim by the Client in respect of any breach of Contract shall only be actionable if the Client has served written notice of it, giving details of the circumstances of the breach, within 12 months of the date the Client became aware of the circumstances giving rise to the breach.
- 16.7. This condition 16 will continue to apply notwithstanding termination of the Contract.

17. GENERAL

17.1. Severability

- 17.1.1. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.1.2. If any provision of the Contract is declared or found to be illegal, unenforceable or void, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal,

valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

17.2. **Unforeseen Events**

17.2.1. A party shall not be in breach of the Contract, nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (an “**Unforeseen Event**”), including but not limited to acts of God, fire, flood, earthquake, windstorm or other natural disaster; war, embargo, terrorist attack, civil commotion or riots, compliance with any law, adverse weather conditions, strike, or the intervention of any governmental authority, interruptions to power supplies, breakdown or failure of plant or machinery, and any failure or default of a supplier or sub-contractor of the relevant party. In such circumstances, subject to condition 17.2.3, the time for performance of the obligations shall be extended accordingly.

17.2.2. Any party that is subject to an Unforeseen Event shall promptly notify the other party in writing of the nature and extent of the Unforeseen Event causing its failure or delay in performance.

17.2.3. If the Unforeseen Event prevails for a continuous period of more than 60 days, either party may terminate this agreement by giving 7 days' written notice to all the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

17.3. **Relationships**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

17.4. **Notices**

17.4.1. Any notice to be given under the Contract by a party to the other party: (a) shall be sent for the attention of the receiving party's Authorised Representative, at the address or fax number specified in the Order Form (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this condition 17.4); and (b) shall be: (i) delivered personally (including delivery by any commercial delivery service) with acknowledgment received; (ii) by registered or special delivery mail, postage prepaid; or, (iii) by fax.

17.4.2. If a notice has been properly sent or delivered in accordance with this condition 17.4, it will be deemed to have been received: (a) if delivered personally, at the time of delivery; (b) if delivered by commercial courier, at the time of signature of the courier's receipt; (c) if sent by fax, at the time of transmission provided an original is received by the addressee by any commercial delivery service within two (2) Business Days of such fax; or (d) if sent by registered or special delivery mail, at the time of signature on the mail receipt.

17.4.3. For the purposes of this condition 17.4: (a) all times are to be read as local time in the place of deemed receipt; and (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.

17.4.4. The provisions of this condition 17.4 shall not apply to the service of any process in any legal action or proceedings.

17.4.5. A notice required to be given under the Contract shall not be validly served if sent by e-mail.

17.5. **Variation**

Subject to condition 7.2.2, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

17.6. **Waivers**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.7. **Third Party Rights**

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

17.8. **Governing Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with the laws of England. The courts of England shall have the exclusive jurisdiction to any matter, claim or dispute arising out of or in relation to the Contract.

By signing this Agreement, the Client agrees to be bound by all of the terms and conditions contained herein.

Signature

Company Name:

Name:

Title:

Date:

Appendix 1

Acceptable Use Policy

1. The Customer is solely responsible for the content it distributes or otherwise makes available using the Services. The Customer is responsible for all use of all accounts in its name, irrespective of whether such use is without its knowledge and/or consent, save that this shall not include any use by the Service Provider or any of the Service Provider personnel.
2. The Customer is prohibited from carrying out, or allowing to be carried out, any of the Services in a way that:
 - (i) breaches any law or regulation (including, but not limited to, libel, slander, invasion of privacy, harassment, obscenity, child pornography, export laws and regulations, and infringement or misappropriation of another party's copyrights, trademarks, patents, trade secrets or other intellectual property rights);
 - (ii) may be deemed abusive, offensive, anti-social, racist, distressing, harmful or threatening or encourages or promotes illegal or socially unacceptable or irresponsible behaviour;
 - (iii) has any fraudulent purpose or effect or that conceals the identity of the Client or impersonates any individual or organisation;
 - (iv) threatens the integrity and/or security of any network or computer system (including, but not limited to, transmission of worms, viruses and other malicious codes and accessing any device or data without proper authorisation);
 - (v) attempts to use the Services in such a manner so as to avoid incurring charges for or otherwise being required to pay for such usage;
 - (vi) otherwise degrades or interferes with other users' use of the Services;
 - (vii) constitutes unsolicited bulk mail or "spam";
 - (viii) sells or resells the Company's services or products without consent; or
 - (ix) breaches generally accepted standards of data networks conduct and usage, including, but not limited to, denial of service attacks, web page defacement, port and network scanning, and unauthorised system penetrations.
3. The Service Provider may suspend and/or terminate the Services at any time on written notice to the Client for any failure of the Client, its representatives or its users to comply with this policy or for allowing others to do the same where and to the extent the Service Provider is required to suspend and/or terminate the Services by a supplier that the Service Provider uses to provide the relevant affected Services.
4. The Service Provider may deny all network access on written notice (via letter or email) to the Client where it reasonably suspects any unlawful activity connected to the Client's use of the Services. The Service Provider may also implement reasonable technical mechanisms to prevent the same where and to the extent the Service Provider is required to make suspend and/or terminate the Services by a supplier that the Service Provider uses to provide the relevant affected Services.

5. The Service Provider may charge the Client to cover reasonable administrative costs associated with the Client having used the Services contrary to this policy, including, but not limited to, recovery of the costs of identifying offenders and removing them from or discontinuing providing them the Services.
6. The Client and its users are responsible for protecting their password and for any authorised or unauthorised use made of their passwords.
7. The Service Provider reserves the right to change this policy from time to time on written notice to the Client where and to the extent the Service Provider is required to make such changes by a supplier that the Service Provider uses to provide the Services. The Customer's continued use of the Services shall be deemed acceptance of such modifications.