

## 1. INTRODUCTION

- 1.1** This document sets out the general terms and conditions ("**General Terms**") which apply to all Products and Services (together "**Deliverables**") which we, Welcomm Communications Limited a company incorporated in the United Kingdom under registered company number 3815160, whose registered office is at Welcomm House, 24 The Point, Rockingham Road, Market Harborough, Leicestershire, LE16 7QU, ("**we**" or "**us**") provide to you as our customer (as you are described and set out on the Order Form ("**you**"), which Deliverables (which, for clarity, may be more specifically set out within the relevant Order Terms).
- 1.2** These General Terms explain our duties to you and your duties to us and form part of your agreement with us for all Deliverables we provide you with.
- 1.3** Our agreement with you is made up of (i) these General Terms; (ii) any specific terms and conditions for specific Deliverables ("**Specific Terms**") (as available to view at our website, being [www.welcomm.co.uk](http://www.welcomm.co.uk)); (iii) any project proposal or order form (the nature of which, for specific Deliverables, is more particularly set out within the Specific Terms) issued by us to you in connection with the provision of the specific Deliverables ("**Order Terms**"); and (iv) any other written document either issued by us (and expressly referring to and incorporating itself into the Agreement) or any amendments or supplements to the Agreement signed and agreed in writing between you and us. Together the above documents shall constitute and be known as the "**Agreement**", and apply to the contract between you and us to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4** When construing the meaning of the Agreement, the documents listed in Clause 1.3 shall, unless otherwise set out in the Specific Terms in respect of specific Deliverables, be interpreted in a reverse order of priority in the event of any inconsistency or conflict, with documents appearing later in the list taking priority over documents appearing earlier in the list.
- 1.5** In these General Terms, we refer to the Specific Terms and Order Terms together as the "**Additional Terms**".
- 1.6** All of our terms and conditions of business (other than the Order Terms) are set out in material we publish on our website. You should access, print or save from our website a copy of these General Terms and the relevant Specific Terms. Alternatively, you can ask us to confirm which Additional Terms apply to the Agreement between you and us at any time.
- 1.7** Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 1.8** Any order placed by you shall only be deemed to be accepted upon your signature of the relevant Order Terms, or, in the event that no Order Terms have been signed, we otherwise provide the Deliverables to you, at which point and on which date the Agreement shall come into existence ("**Commencement Date**") (unless otherwise set out in the Specific Terms).
- 1.9** We may amend these General Terms from time to time as set out in Clause 10. Every time you, as our customer, agree new Order Terms for the provision of specific Deliverables you should check these General Terms and the Specific Terms to ensure that you understand the terms which will apply to our Agreement at that time. These General Terms were most recently updated on 2 January 2020.

## 2. DEFINITIONS & INTERPRETATION

- 2.1** The following terms shall have the following meanings in these General Terms and the Specific Terms (unless otherwise defined therein):
- "**Agreement**" has the meaning given to it in Clause 1.3;
- "**Additional Terms**" has the meaning given to it in Clause 1.5;
- "**Appendix**" means the appendix to these General Terms;
- "**Background IP**" has the meaning given to it in Clause 9.1;
- "**Brexit Trigger Event**" has the meaning given to it in Clause 14.5.2;
- "**Business Day**" means any day which is not a Saturday, Sunday, bank or public holiday in England;
- "**Charges**" means the total charges set out or provided for within the Order Terms or otherwise provided for or payable under the

Agreement, to be paid in accordance with the timeframes specified in these General Terms or otherwise set out in the Additional Terms, in consideration of the supply of the Deliverables;

"**Clause**" means a clause of these General Terms;

"**Commencement Date**" has the meaning given to it in Clause 1.8;

"**Confidential Information**" means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including the Deliverables) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party;

"**Contract**" has the meaning given to it in the Specific Terms;

"**Data Protection Legislation**" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

"**Deliverables**" has the meaning given to it in Clause 1.1;

"**Delivery Location**" has the meaning given to it in Clause 4.1;

"**Equipment**" has the meaning given to it in the Specific Terms;

"**Event of Force Majeure**" has the meaning given to it in Clause 14.4;

"**Foreground IP**" has the meaning given to it in Clause 9.4;

"**IP Rights**" means any patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not, in any country (including the United Kingdom);

"**Legislation**" has the meaning given to it in the Specific Terms;

"**Order Terms**" has the meaning given to it in Clause 1.3;

"**Premises**" means your premises/property to which, or in which, among other things, the Deliverables may be supplied or installed;

"**Products**" means any products which we may provide to you, as

may be more specifically set out within the relevant Order Terms;

"**Service Level**" has the meaning given to it in the Specific Terms;

"**Services**" means any services which we may provide to you, as

may be more specifically set out within the relevant Order Terms;

"**Software**" has the meaning given to it in the Specific Terms;

"**Specific Terms**" has the meaning given to it in Clause 1.3;

"**UK Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulations ((EU) 2016/679 and the Data Protection Act 2018;

"**we**" or "**us**" has the meaning given to it in Clause 1.1;

"**you**" has the meaning given to it in Clause 1.1; and

"**Your Default**" has the meaning given to it in Clause 6.6.

**2.2** Headings are for convenience only and shall be ignored in interpreting the Agreement.

**2.3** Words in the singular include the plural and those in the plural include the singular.

**2.4** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

**2.5** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

**2.6** Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2.7** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**2.8** A reference to **writing** or **written** includes fax but not email.

## 3. PROVISION OF DELIVERABLES

**3.1** In consideration of payment by you of the Charges, we shall provide the Deliverables set out within the relevant Order Terms, or otherwise agreed between the parties in writing.

**3.2** We shall provide the Services to you using reasonable skill and care,

and in a good and workmanlike manner, using appropriate skills and experience, and having regard to the nature of the Deliverables.

- 3.3 We warrant that the Products shall conform in all material respects with their description on the Order Form.
- 3.4 The Order Form will set out the Deliverables to be owned by you once title to such Deliverables passes to you in accordance with the Agreement. You acknowledge and agree that all other Deliverables will not at any time be owned by you and, accordingly, we or a third party may have rights in or to such other Deliverables. We warrant that you may use such other Deliverables in accordance with the terms of the Agreement.
- 3.5 We shall use reasonable endeavours to ensure that the benefit of any third party warranties applicable to any Deliverables we supply is passed on to you. In addition, those warranties set out within the relevant Specific Terms in respect of specific Deliverables (if any) shall apply.
- 3.6 We shall use reasonable endeavours to provide the Deliverables (including delivering the Products or performing the Services) within a reasonable time. However, for the avoidance of doubt, the timing of performance of any of our obligations arising under the Agreement shall not be of the essence.
- 3.7 You acknowledge that you have assessed for yourself the suitability of the Deliverables for your requirements. We do not warrant that the Deliverables will be suitable for such requirements, or that any use of the Deliverables will be uninterrupted or error free.
- 3.8 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform its duties and obligations under the Agreement and that those persons signing the Order Terms, if any, are duly authorised to bind the party for whom they sign.
- 3.9 We may, without further notice to you, appoint a suitably qualified agent, consultant or sub-contractor to provide the Deliverables or any part of them on our behalf. You will continue to be liable to pay our Charges as provided in Clause 8 below, and shall not be liable directly for any of the fees of any such agent, consultant or sub-contractor, unless otherwise agreed.

#### 4. DELIVERY OF PRODUCTS

- 4.1 We shall deliver the Products to the location set out in the Order Terms or such other location as the parties may agree ("**Delivery Location**") at any time after we notify you that the Products are ready for delivery.
- 4.2 Delivery of the Products shall be completed on the Products arrival at the Delivery Location. We shall not be liable for any delay in delivery of the Products that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products, or your failure to take delivery of the Products, or an Event of Force Majeure.
- 4.3 If, in the absence of any mitigating circumstances, you have not received any Products within 14 days of the date of your order for such Products, then you shall be required to give us written notice. In the event that you have not provided such notice to us within the 14 day period referred to in this clause 4.3, and we are able to evidence proof of posting and a signature upon receipt of the Products, the Products shall be deemed delivered to you.
- 4.4 In the event that you accept delivery of any Products, you shall be required to give us notice of any fault, mis-description or damage to us within 5 Business Days of receipt of the Products, and provide such reasonable photographic or other evidence that we deem necessary in respect of such fault, mis-description or damage.
- 4.5 We may deliver the Products by instalments, which may be invoiced and if so invoiced paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

#### 5. TITLE AND RISK

- 5.1 The risk in any Products shall pass to you on delivery pursuant to the Agreement.
- 5.2 Title to any Products shall not pass to you until we have received payment in full (in cash or cleared funds).
- 5.3 Until title to the Products has passed to you, you shall: (i) hold the Products on a fiduciary basis as our bailee; (ii) store the Products

separately from all other goods held by you so that they remain readily identifiable as our property; (iii) not remove, deface or obscure any identifying mark on or relating to the Products; (iv) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery; (v) notify us immediately if you become subject to any of the events listed in Clause 12.2(b); (vi) not purport to sell or otherwise part with possession of the Products, and (vii) give us such information relating to the Products as we may require from time to time, but you may use the Products in the ordinary course of your business (subject always to the provisions of the Agreement).

- 5.4 If, before title to the Products passes to you, you become subject to any of the events listed in Clause 12.2(b) or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Products have not been irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Products and, if you fail to do so promptly, enter your Premises or the premises of any third party where the Products are stored in order to recover them, and/or suspend the provision of the Deliverables.

#### 6. YOUR OBLIGATIONS

- 6.1 We may require access to your Premises, office accommodation or other facilities, information, tools and resources for, and during the course of, the provision of the Deliverables. If so requested by us, you will provide us (and our employees, agents, consultants and subcontractors) with free and unfettered safe access to such Premises, office accommodation or other facilities, information, tools and resources to the extent reasonably requested by us for the purposes of performing our obligations under the Agreement, and, more generally, you shall co-operate with us in all matters relating to the Deliverables. You hereby warrant that you are entitled to grant such safe access, and provide any such information, tools or resources as outlined in this Clause 6.1.
- 6.2 You acknowledge that, in giving any opinion or advice in connection with the provision of the Deliverables, we rely on the information about you and the Deliverables, and we do not, and do not seek to, establish the reliability of such information. Accordingly, you: (i) undertake to provide complete and accurate information about you and about anything which is or may be relevant to the Deliverables and to provide such other information as we may reasonably request; and, (ii) warrant that any such information provided is accurate and complete in all material respects, and not misleading.
- 6.3 You also agree to, to the extent necessary, prepare your Premises for the provision of the Deliverables, and to obtain and maintain all necessary licences, permissions and consents which may be required for the Services, and the provision of the Services, before the date on which the Services are to start.
- 6.4 You shall also keep and maintain all materials, equipment, documents and other property belonging to us or otherwise under our control ("**Our Materials**") at your Premises in safe custody at your own risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our prior instructions or authorisation.
- 6.5 To the extent applicable, you acknowledge that you will retain responsibility at all times for compliance with all relevant laws, protocols and regulations with respect to the Deliverables, as well as responsibility for all costs of such compliance. Notwithstanding and without prejudice to the other provisions of this clause 6.5, you will at all times comply with all applicable laws, including health and safety laws in relation to the Deliverables and the Agreement.
- 6.6 If our performance of any of our obligations in respect of the Deliverables under the Agreement are prevented or delayed by any of your acts or omissions or by your failure to perform any relevant obligation ("**Your Default**"), or otherwise in the event of Your Default (i) we shall, without limiting our other rights or remedies, have the right to suspend provision of the Deliverables until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations; (ii) we shall not be liable for any costs or losses sustained or incurred

by you arising directly or indirectly from our failure to perform, or delay in performing, any of our obligations where such failure or delay is attributable to Your Default; and (iii) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

## **7. DATA PROTECTION**

- 7.1** You acknowledge and agree that any details we hold about you may be submitted to a credit reference agency.
- 7.2** The parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.3** If we process any personal data on your behalf when performing our obligations under the Agreement, the parties acknowledge and agree that for the purposes of the Data Protection Legislation and in any such case: (i) you acknowledge and agree that the personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the Services and fulfil our other obligations under the Agreement; (ii) you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the Agreement on your behalf; (iii) you shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (iv) we shall process the personal data only in accordance with the terms of the Agreement and any lawful instructions reasonably given by you from time to time; and (v) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **8. CHARGES**

- 8.1** The Charges (or the method for calculation thereof) (as applicable) set out or provided for within the Order Terms shall only be fixed with regard to the provision of the Deliverables contemplated by the relevant Additional Terms, and such fixing shall be subject to all the other terms of the Agreement, and in particular to any increases to the Charges attributable to events falling outside of our control.
- 8.2** Where we have been retained on an ad-hoc basis to provide Deliverables, and no monthly retainer or other fixed fee or retainer arrangement exists (as may be set out within the relevant Order Terms), where: (i) we provide you with additional Deliverables beyond those contemplated by the relevant Additional Terms, or (ii) no Order Terms have been provided to you by us, the Charges for all Services shall be at calculated on a time and materials basis at our then prevailing standard hourly rates for such Services, and you shall be liable to pay the Charges for all Products at the costs specified by us.
- 8.3** We reserve the right to alter our prevailing standard rates for Charges for Services at any time, including during the term of our Agreement with you. However, where such a change to our standard rates is to be applied, we shall normally provide you with at least 1 week's prior notice, either orally or in writing. Changes to our prevailing standard rates will not affect any Charges which we have specifically confirmed as applying during the term of our Agreement within the relevant Order Terms.
- 8.4** All Charges for Products quoted within the relevant Order Terms shall be inclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be paid by you when paying for the Products.
- 8.5** We reserve the right to increase the price of the Deliverables, giving you notice, to reflect any increase in the cost of the Deliverables that is due to: (i) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties and increase in labour, materials, other manufacturing costs, or other increases attributable to the actions of third parties); (ii) any request by you to change the delivery date(s), quantities or types of Products ordered, or your specification for the Products (if any); or (iii) any delay caused by your instructions in respect of the Products or your failure to

- perform your obligations under the Agreement.
- 8.6** We shall invoice you for the Charges specified in the Order Form or otherwise provided for under the Agreement, in respect of Products, on or at any time after completion of delivery, and in respect of Services, on a monthly basis (unless otherwise agreed in the Agreement). You must pay all undisputed Charges set out within each invoice in full and cleared funds within 30 calendar days of the date of the invoice. Timings for payment by you shall be of the essence of the Agreement.
- 8.7** Where you dispute any invoice, you shall notify us within 7 calendar days in writing. We agree to provide all such evidence as we deem may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. We reserve the right not to supply any further Deliverables to you while such a dispute is ongoing. Where only part of an invoice is disputed, you shall pay the undisputed amount on the due date for payment as set out within Clause 8.6 (or otherwise provided for in the relevant Additional Terms). If the parties have not resolved the dispute within 30 days of you providing us with notice that you dispute the relevant invoice, we reserve the right to terminate the Agreement without notice, whereupon all Charges payable under the Agreement shall become immediately due and payable as per Clause 13.2.
- 8.8** Payments due under the Agreement shall be made in pounds sterling.
- 8.9** All sums payable under the Agreement are exclusive of VAT and any other sales or similar taxes, custom duties, withholding taxes or similar charges, for which you shall be responsible and you shall pay all and any such amounts to us at the same time as payment is due for the supply of the Services or Products.
- 8.10** You shall have no right to any refund of the Charges paid or payable under the Agreement including on the termination of the Agreement.
- 8.11** If you fail to make a payment due to us under the Agreement by the due date, then, without limiting our remedies under the Agreement or otherwise, you shall pay interest on the overdue sum from the due date until payment of the overdue sum in full, whether before or after judgment. Interest under this Clause 8.11 will accrue each day at the rate of 4% above the base rate of National Westminster Bank plc as applying from time to time per annum, but at 4% per annum for any period when the base rate of National Westminster Bank plc is below 0%.
- 8.12** All Charges due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to you by us against any amount payable by us to you.
- 8.13** Any payments made by you and returned by the bank will incur a £15 administration charge, which will be payable by you. Where you are situated outside the UK you shall be responsible for transferring the relevant funds internationally to our nominated account and for paying any fees or other amounts relating to such transfer so as to ensure that we actually receive the full £15 administration charge.
- ## **9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1** Any IP Rights which the relevant party to the Agreement can demonstrate are already held by it at the date of the Agreement or which at any time after the date of the Agreement have been acquired or developed by it entirely independently of the provision of the Deliverables, and of the use of any Confidential Information of the other party, and all modifications thereto and derivative versions thereof created at any time ("**Background IP**") shall remain the sole property of that party.
- 9.2** You hereby grant to us a royalty-free, fully paid up, non-exclusive, non-transferable licence to use your Background IP, if any, as required to allow us to perform our obligations under the Agreement.
- 9.3** You acknowledge that, in respect of any third party IP Rights in the Deliverables, your use of any such IP Rights is conditional on our obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.
- 9.4** Any IP Rights, other than Background IP, created or developed by

us in the course of provision of the Deliverables ("**Foreground IP**") shall be our sole property.

- 9.5** Except as expressly set out in this Contract, all intellectual property rights in our Equipment will remain with us or our suppliers or licensors.
- 9.6** You will not copy, decompile or modify the Software without our prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party.
- 9.7** You acknowledge that we have no obligation to review or edit any of your information or third party information which you store on or transmit through our Equipment or use in connection with the Services. However, we reserve the right to access, retain and disclose copies of such information for the purposes of:
- 9.7.1** correcting, maintaining and improving the Services;
- 9.7.2** complying with any Legislation, conditions of our authorisation with, or status as a preferred contracting partner with, our suppliers or the terms of our contracts;
- 9.7.3** observing the performance of the Services including for Service Level monitoring;
- 9.7.4** retaining a record of activity on our Equipment or systems; or
- 9.7.5** complying with any request for information or disclosure from a court or other appropriately authorised body.

## **10. AMENDMENTS TO THE AGREEMENT**

- 10.1** We may, acting in our sole discretion, amend these General Terms and any of the Specific Terms from time to time. We shall notify you of any such amendments and you acknowledge and agree that all and any such amendments shall apply to the Agreement (and be binding on you) immediately upon us giving you any such notice.
- 10.2** Notwithstanding and without prejudice to clause 10.1 above, every time we supply Deliverables to you, the terms applying to the Agreement between you and us for the provision of the Deliverables, shall be as set out in the relevant Order Terms, and as set out in the version of these General Terms and the Specific Terms in force at the time of the signing (or issuing if no Order Terms have been signed) of the relevant Order Terms.

## **11. LIMITATION OF LIABILITY – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 11.1** Nothing in the Agreement shall exclude or limit our liability for: (i) death or personal injury caused by our negligence, or the negligence of our employees, agents, consultants or subcontractors; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or (v) for any other liability which cannot be excluded or limited under applicable law.
- 11.2** Subject to Clauses 11.1, 11.3 and 11.4, our total liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the Charges actually paid to, and received by, us pursuant to the Agreement, in the period of 12 months immediately preceding the date the cause of action arose.
- 11.3** The amounts awarded or agreed to be paid or actually paid to us:
- 11.3.1** as Liquidated Damages;
- 11.3.2** in respect of VAT chargeable under this Agreement;
- 11.3.3** under Clause 8.11 (interest);
- 11.3.4** under Clause 8.13 (administration charge) and/or any other amount expressed to be an administration fee or administration charge under the Agreement;
- 11.3.5** any damages, costs and interests awarded to us in respect of the Agreement, shall in each case be specifically excluded from the calculation of the Charges pursuant to Clause 11.2 above.
- 11.4** Subject to Clause 11.1, we shall not in any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of contracts, loss of business or business opportunities, loss of production, loss of turnover or revenue, loss of availability, any loss or corruption (whether direct or indirect) of data or information provided by you,

loss of anticipated savings, wasted expenditure, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by you, or for any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature (even if we had been advised of the possibility of you incurring the same) or any punitive or exemplary damages.

- 11.5** Nothing in this Clause 11 shall affect or limit your obligation to pay Charges properly due under the Agreement.
- 11.6** Subject to Clause 11.1, the express terms of the Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.7** We shall have no liability to you to the extent that such liability would not have arisen but for Your Default.
- 11.8** Statements made by us relating to the Deliverables, and all recommendations, opinions, surveys and forecasts (together "**Forecasts**") in any communication between you and us, if any, are made in good faith on the basis of information available at the time and such Forecasts are addressed only to you. Whilst we will use reasonable skill and care in the preparation of such Forecasts, neither we nor any agent, consultant, employee or sub-contractor engaged by us shall have any liability in relation to losses or damage incurred as a result of or in relation to your reliance on such opinions or recommendations and you expressly acknowledge that such liability is a business risk that you wholly assume.
- 11.9** Implementation of the results of the Services we provide and your completion of any project of which the Services we provide form part may require the involvement or supervision of or giving advice by us to third parties engaged by you. We strongly recommend that you obtain independent advice before entering into any legally binding commitment with any such third parties. Without limiting any other provision of these General Terms and/or the Agreement, we will, where appropriate, use reasonable endeavours to assist you in minimising the risk and additional cost or delay relating to the involvement in your project of any third parties involved in manufacturing or the provision of other services or goods to you, however, in no circumstance shall we be liable for any of the acts or omissions, or the negligence, of such third parties.
- 11.10** We may, during the supply of the Deliverables, make statements about or recommendations of third party products or services. We give no warranty in relation to such products or services, and you shall rely solely on the warranties and remedies provided by any such third party with whom you may contract.
- 11.11** You are responsible for making your own arrangements for the insurance of any loss you may suffer as a result of your entry into the Agreement.

## **12. TERM AND TERMINATION**

- 12.1** The Agreement shall come into effect upon the Commencement Date, and, subject to other terms of the Agreement, shall continue in force until we cease providing Deliverables to you and all outstanding Charges owing to us by you have been paid in full (or as otherwise specified within the Specific Terms), or the termination of the Agreement in accordance with its provisions, whichever is sooner.
- 12.2** Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating the Agreement with immediate effect if:
- 12.2.1** the other party commits any material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach;
- 12.2.2** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than, in respect of us only (and not you), in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless in respect of

us only (and not you) for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

**12.2.3** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business ceases, or threatens to cease, to trade.

**12.3** Without affecting any other right or remedy available to us, we may terminate the Agreement with immediate effect by notice in writing to you if:

**12.3.1** you fail to pay any amount due under the Agreement on the due date for payment;

**12.3.2** you purport to assign any of your rights or obligations under the Agreement; or

**12.3.3** there is a change of Control of you (and for these purposes "Control" has the meaning given in section 1124 of the Corporation Tax Act 2010).

**12.4** Notwithstanding Clause 12.1 above, we may terminate the Agreement at any time and for any reason upon giving you 3 months' prior written notice.

**12.5** Without affecting any other right or remedy available to us, we may suspend the supply of the Deliverables under the Agreement (or the supply of any goods and/or services under any other contract between you and us) if you fail to pay any amount due under the Agreement on the due date for payment, you become subject to any of the events set out in Clause 12.2, or we reasonably believe that you are about to become subject to any of the events set out in Clause 12.2.

## **13. EFFECTS OF TERMINATION**

**13.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.

**13.2** Upon termination of the Agreement: -

**13.2.1** at our request, you shall promptly return to us or otherwise destroy as we may instruct, any Confidential Information which you may have in your possession or under your control; and

**13.2.2** immediately pay to us all outstanding Charges, including all interest, due under the terms of the Agreement; and

**13.2.3** in respect of Deliverables supplied but for which no invoice has been submitted to you, we may submit an invoice, which shall be payable by you immediately on receipt.

## **14. GENERAL**

**14.1** Confidentiality: Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under the Agreement. The provisions of this Clause 14.1 shall not apply to any information which: (a) is or comes into the public domain without breach of the Agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; (c) was obtained from a third party free to divulge such information; or (d) is required by law to be disclosed to any person who is authorised by law to receive the same (after consultation, if practicable, with the disclosing party). Each party shall notify the other party if it becomes aware of any unauthorised disclosure of any Confidential Information as soon as reasonably practicable (and in any event within 2 Business Days of the party becoming aware of any such unauthorised disclosure) and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

**14.2** No Assignment or Sub-Licensing: You may not assign, sub-license, sub-contract, mortgage or otherwise transfer, dispose or otherwise deal with the Agreement or any of your rights or obligations under it without our prior written consent. We may assign, sub-license, sub-contract, mortgage or otherwise transfer, dispose or otherwise deal with the Agreement or any of our rights or obligations under it.

**14.3** Notices:

**14.3.1** Any notices required or permitted to be given under the Agreement shall be in writing and shall be:

(i) delivered by hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by fax to its main fax number.

**14.3.2** Any notice shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt, or at the time the notice is left at the proper address;

(ii) if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting or at the time recorded by the delivery service;

(iii) if sent by fax, at the time of transmission (subject to the sending party's successful transmission confirmation), or, if this time falls outside business hours in the place of receipt, when business hours resume (and for these purposes business hours means 9am to 5pm on a Business Day).

**14.3.3** This clause 14.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**14.4** Force Majeure: Neither party shall be liable to the other party for any delay or failure to perform its obligations under the Agreement to the extent and for so long as such delay or failure results from circumstances beyond its reasonable control including, without limitation:

(i) acts of God, flood, drought, earthquake or other natural disaster;

(ii) epidemic or pandemic;

(iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(iv) nuclear, chemical or biological contamination or sonic boom;

(v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(vi) collapse of buildings, fire, explosion or accident;

(vii) any labour or trade dispute, strikes, industrial action or lockouts;

(viii) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

(ix) interruption or failure of utility service,

(an "**Event of Force Majeure**") provided that it notifies the other party within 5 Business Days of becoming aware of such event. The party affected by the Event of Force Majeure shall use all its reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations. If any Event of Force Majeure continues for a period exceeding 3 months, either party shall have a right to terminate the Agreement on 30 days' written notice to the other party.

## **14.5** Brexit

**14.5.1** If a Brexit Trigger Event occurs, we may:

(a) require you to negotiate in good faith an amendment to the Agreement to alleviate the Brexit Trigger Event; and

(b) if no such amendment is made to the Agreement within 30 days, terminate the Agreement by giving you not less than 10 days and not more than 30 days written notice. On termination under this Clause 14.5, Clauses of the Agreement that expressly or impliedly are intended to apply on or following termination shall continue to apply.

**14.5.2** For the purposes of this clause 14.5, a "**Brexit Trigger Event**" means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:

(a) any adverse impact on our ability to perform the Agreement in accordance with its terms or the law; and/or

(b) any increase in the costs incurred (or to be incurred) by us in performing the Agreement since the price for the Deliverables was

- last agreed.
- 14.5.3** **Overlap with other rights and obligations.** Save as expressly provided in Clause 14.5.2, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) the Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this Clause and any other provision of the Agreement, the provisions of this clause shall prevail.
- 14.6** **Waiver:** A waiver of any right or remedy under the Agreement or by law shall not be deemed a waiver of any subsequent right or remedy. A failure of either party to enforce or to exercise any term of the Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or to exercise it. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.7** **Severability:** If any provision or part-provision of the Agreement 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 14.7 shall not affect the validity and enforceability of the rest of the Agreement.
- 14.8** **Entire Agreement:** The Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. You shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement. Any samples, drawings, descriptive matter or advertising issued by us and any illustrations or descriptions of the Deliverables contained on our website or in our advertising material are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Agreement or have any contractual force.
- 14.8** **Survival:** The terms of Clauses 1, 2, 6.4, 6.5, 7, 8.10, 8.11, 9, 10, 11, 12, 13 and 14 shall survive expiry, variation or termination of the Agreement. Such other terms in these General Terms or the Specific Terms which, from their nature or context, it is contemplated that they are to survive expiry, variation or termination, shall remain in full force and effect notwithstanding expiry, variation or termination of the Agreement.
- 14.9** **No Variation:** Subject to and without prejudice to our right to amend these General Terms, or the Specific Terms, from time to time, no variation of, or amendment to, these General Terms or the Specific Terms shall bind either party unless made in writing and signed by authorised representatives of both parties.
- 14.10** **Independent Contractors:** The relationship of the parties is that of independent contractors dealing at arms' length and nothing in the Agreement shall be construed so as to constitute the parties as partners, joint venturers, agents of the other, or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither party shall hold itself out as entitled to do the same. Nothing in the Agreement shall create or be deemed to create the relationship of employer and employee.
- 14.11** **Governing Law:** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.
- 14.12** **Third Party Rights:** Notwithstanding any other provisions of the Agreement, nothing in the Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 14.13** **Remedies:** Except as herein expressly provided otherwise, the rights and remedies provided in the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.14** **Non-Solicitation:** From the Commencement Date, and for a period of 12 months from the termination of the Agreement, neither party shall (except with the prior written consent of the other) solicit the employment of any person who is employed by the other party in the course of providing the Deliverables, other than by means of a general advertising campaign open to all comers and not specifically targeted at any of the employees of the other party.
- 14.15** **Publicity:** The provisions of Clause 14.1 notwithstanding, we reserve the right to publicise the fact of the Agreement, your identity, and details concerning the nature of the Deliverables provided to you for, inter alia, marketing and promotional purposes.

**APPENDIX**

<b>SCHEDULE SETTING OUT SPECIFIC TERMS APPLYING TO DELIVERABLES PROVIDED</b>	<b>DESCRIPTION OF DELIVERABLES</b>
<b>Schedule A</b> - Mobile Phone Supply	Specific Terms applying in respect of the supply of mobile communication devices, and the provision of associated services and mobile device management services.  [HYPERLINK]
<b>Schedule B</b> – IT Support and Supply Services	Specific Terms applying in respect of the supply of IT support, infrastructure, back up and other support services and the provision of associated services and computers, data storage devices, networks and other equipment and related hardware and software.  [HYPERLINK]
<b>Schedule C</b> - Unified Products and Services Supply	Specific Terms applying in respect of the supply of unified communication hardware, billing, and the provision of associated services. Specific Terms applying in respect of the supply and maintenance of IT hardware and software or our IT Services offering.  [HYPERLINK]