

## Blue Portal Voice & Data Terms & Conditions

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## Parties

- (1) Blue Portal Voice & Data Limited incorporated and registered in England and Wales with company number 10269729 whose registered office is at The Barnsley Business Village, Innovation Way, Wilthorpe, Barnsley, South Yorkshire, S75 1JL (**Supplier**)
- (2) You, the details of which are set out in our proposal above (**Customer**)

## BACKGROUND

- (A) The Supplier is in the business of providing Telecommunication Solutions, Broadband, Data Network Solutions, CCTV and IT Hardware Sales.
- (B) The Customer agrees to obtain and the Supplier agrees to provide the Services and/or Goods on the terms set out below.

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions.

**Applicable Laws:** all applicable laws, statutes, regulations from time to time in force.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 8.30 am to 5.00 pm on any Business Day.

**Change Order:** has the meaning given in clause 10.1

**Charges:** the sums payable for the Services, as set out in the Proposal

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 4.1(d)

**Data Protection Legislation:** 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) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in the Proposal and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

**Equipment:** any hardware or software provided by the Supplier or relating to products or services supplied by the Supplier

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Milestones:** a date by which a part of the Services is to be completed, as set out in the Proposal.

**Services:** the services as set out in the Proposal.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as

updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This agreement shall be binding on, and endure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax and email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Commencement, duration and Basis of Sale**

2.1 The agreement to these terms shall commence on the earlier of the date when they were signed by the Customer or when any equipment is provided or any services begin, and shall continue under the terms of the proposal, for the minimum period as set out in the proposal, unless terminated earlier in accordance with clause 16 (Termination), after which the agreement between the parties shall continue unless terminated by either party by giving the other not less than one month written notice to terminate.

2.2 For the avoidance of doubt, where the agreement is terminated by either party, in any circumstances, prior to the expiration of any minimum term, the Supplier shall invoice the Customer for the remainder of the minimum term and the Customer shall pay the invoice on receipt.

2.3 The Proposal and any quotation within it is valid for a period of 30 days only and the Supplier may withdraw it at any time by giving written notice to the Customer.

2.4 Each order or acceptance of a proposal or quotation for Goods or Services by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.

2.5 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues a written order acknowledgement to the Customer, or the Supplier delivers the Equipment to the Customer or any service beings, whichever occurs earlier.

2.6 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of any Goods not delivered to reflect any increase in the cost to the Supplier which is due to market conditions or any factor beyond the control of the Supplier (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

### **3. Supplier's responsibilities**

- 3.1 The Supplier shall use reasonable endeavours to manage and complete the Services and/or supply the Goods, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Proposal but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 3.3 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.
- 3.4 The Supplier reserves the right to make changes to telephone numbers supplied to the Customer where required by reason of any regulatory or statutory reason, provided it gives the Customer no less than 30 days notice. The Supplier reserves the right to suspend all service where maintenance or repair is required.
- 3.5 In relation to Fixed Network Services, the Supplier will carry out a site survey to determine that the services can be provided, and the Supplier reserves the right to vary any quoted charges following the completion of the survey.

### **4. Customer's obligations**

- 4.1 The Customer shall:
  - (a) co-operate with the Supplier in all matters relating to the Services;
  - (b) appoint a manager for the Services. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
  - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in the Proposal;
  - (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required or

- otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (e) inform the Supplier of all health and safety and security requirements that apply at the Customer's premises;
  - (f) ensure that its services are not used for any purpose that would be unlawful, abusive, defamatory or be an infringement of copyright or intellectual property rights;
  - (g) ensure that any third party using its facilities agrees to be bound to the terms of this agreement on a back to back basis;
  - (h) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to the Suppliers minimum specification;
  - (i) report any faults to the Supplier as soon as is practicable
  - (j) must not allow any other party other than the Supplier to service, repair, revise or interfere with the equipment or services during the term of this agreement;
  - (k) must carry out any minor maintenance measures as advised by the Supplier and must at all times follow and act on advice of the Supplier;
  - (l) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
  - (m) use the Suppliers equipment at all times and only use its own equipment with prior written consent from the Supplier;
  - (n) procure a Fixed Network service from the Supplier where requiring to use any Broadband element;
  - (o) be responsible for any early termination charges charged by third parties where there is a transfer of any services, lines or number from such third party to the Supplier;
  - (p) obtain from any current supplier any MAC or PAC codes as requested by the Supplier;
  - (q) keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;



4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## **5. Delivery of Equipment and acceptance**

5.1 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.

5.2 The Equipment may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to and with the agreement of the Customer.

5.3 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.

5.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

5.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had 48 hours to inspect it after delivery and has not exercised in writing any right of rejection.

## **6. Risk and property**

6.1 The Equipment shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Supplier's acknowledgement of order. The Supplier shall off-load the Equipment at the Customer's risk.

6.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:

- (a) the Equipment; and
  - (b) all other sums which are or which become due to the Supplier from the Customer on any account.
- 6.3 Until ownership of the Equipment has passed to the Customer under clause 6.2, the Customer shall:
- (a) hold the Equipment on a fiduciary basis as the Supplier's bailee;
  - (b) store the Equipment (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
  - (d) keep the Equipment insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 16 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.
- 6.5 Until ownership of the Equipment is transferred to the Customer in accordance with clause 6.2, the Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.
- 6.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this clause 6 shall remain in effect.
- 6.7 The Supplier may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

**7. Software licences**

- 7.1 If the Supplier refers to a software licence in the Proposal, the supplier shall indicate where the price includes the licence fee for the Customer's right to use the Software.
- 7.2 If the Customer is provided with any operating system software licence in respect of any Software, the Customer shall consent and/or be deemed to consent to the licence upon installation of the Software.
- 7.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
  - (b) the Customer shall not use the Software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party on 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

**8. Warranty**

- 8.1 The Supplier warrants to the Customer that the Equipment is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this clause 8), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within 12 months of delivery and installation.
- 8.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in clause 8.1 unless:



- (a) the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost for the examination to take place there.

8.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in clause 8.1 if:

- (a) the Customer makes any use of Equipment in respect of which it has given written notice under clause 8.2(a); or
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.

8.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the 12 month period.

8.5 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

8.6 The Supplier provides no minimum speed guarantee in relation to broadband speed which is dependant on a number of factors beyond the Suppliers control.

8.7 The Supplier provides no warranties or guarantees in relation to the quality of VOIP services, which do not provide the features and resilience of a fixed line service. The Suppliers provides no warranties or guarantees where the Customer fails to follow the advice of the Supplier.

## 9. **Non-solicitation**

9.1 Except in respect of any transfer of employees of the Supplier to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), the Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the termination of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been,

engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

- 9.2 Any consent given by the Supplier in accordance with clause 9.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

## **10. Changes, Alterations, Maintenance and Repairs**

- 10.1 The Supplier may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Supplier's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this agreement.

- 10.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer. Where the Supplier makes necessary improvements to the services, for example updates or replacements to software with no changes to the charges then the parties agree that no Change Order is required and that the Supplier may make such changes as it sees fit.

- 10.3 Notwithstanding this clause 10, the Supplier shall in any event, be entitled to increase its charges in accordance with clause 11.5

- 10.4 Any alterations to any equipment, extensions and wiring shall not be carried out without the Consent of the Supplier.

- 10.5 The Supplier shall be entitled to make an additional charge for alterations, revisions, maintenance and repairs in accordance with Clause 11 where the cause of any alteration, revisions or repair is:

- (a) The consequence of a fault due to Customer error or the equipment being interfered with in any way by any party or where a call out or maintenance reveals no fault.

- (b) Due to equipment being subjected to abnormal physical, electrical stress, unsatisfactory environmental or telephone line conditions and the connection of accessories or devices not approved by the Supplier
  - (c) Caused by damage to equipment due to accident, theft, negligence or misuse of the Customer or any other force majeure, to include the failure or defective working of any electrical supply or host systems.
- 10.6 The Suppliers maintenance service does not include repair of equipment damaged by accident or the negligence of the Customer or as a result of theft, vandalism, environmental or telephone line conditions, issues with power supplies or the connection or devices not pre-approved by the Supplier, or dealing with software defects, the supply of cassettes, aerials and batteries, the programming of equipment or dealing with ancillary devices.
- 10.7 The Supplier shall be entitled to make a charge for any required maintenance or repairs where the cause of any issue is contained within clauses 10.5 and 10.6, such charge to be calculated in accordance with clause 11.
- 10.8 The Supplier shall have the right to discontinue any aspect of maintenance in relation to any particular equipment or device that is discontinued by the manufacturer, subject to providing the Customer with 30 days notice.

## **11. Charges and payment**

- 11.1 Where the Supplier supplies to the Customer hardware and any other equipment (“the equipment”), the Supplier shall have the discretion to invoice the Customer in advance of the Supplier ordering “the equipment” and the invoice shall be payable by the Customer on receipt.
- 11.2 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges as set out in the Proposal.
- 11.3 Where the Charges are calculated on a time and materials basis:
- (a) the Supplier shall where possible calculate its charges on an hourly rate basis at the hourly rate as set out in the Proposal;
  - (b) the Supplier's daily fee rates for each individual person as set out in the Proposal are calculated on the basis of a seven hour day, worked during Business Hours;

- (c) the Supplier shall be entitled to charge an overtime rate of a minimum of 50% of the daily or hourly fee rate set out in the Proposal on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and
- 11.4 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
  - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
  - (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost as approved by the Customer in advance from time to time.
- 11.5 The Supplier may increase the Charges and the first such increase shall take effect thirty days after the Supplier has given the Customer written notice of the increase in Charges.
- 11.6 The Supplier shall invoice the Customer for the Charges at the intervals specified, as specified in the Proposal, or on the achievement of the Milestones indicated, in the Proposal. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 11.7 In relation to the Services, the Customer agrees to pay each invoice submitted to it by the Supplier by direct debit and in any event within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time. The Supplier will invoice the Customer on or around the 11<sup>th</sup> of each month and shall collect the direct debit on or around the 26<sup>th</sup> of each month.
- 11.8 On termination of this agreement where notice is given by either party, the customer shall pay the charges for the remainder of the term of the agreement as set out in the proposal. If any deposit has been paid for any services or hardware by the Customer then upon termination or cancellation by either party then any deposit or monies paid shall be non refundable.
- 11.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
  - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;



- (b) the Supplier may suspend all or part of the Services until payment has been made in full.
- (c) the Supplier shall have the discretion to charge to the Customer a non payment administration fee of £40 for each missed payment

11.10 All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **12. Intellectual property rights**

12.1 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 12.1(b):

12.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

12.3 The Supplier:

- (a) warrants that the receipt, use of the Services and the Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party;



- (b) shall, subject to clause 15 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and
- (c) shall not be in breach of the warranty at clause 12.3(a), and the Customer shall have no claim under the indemnity at clause 12.3(b), to the extent the infringement arises from:
  - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
  - (ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
  - (iii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

12.4 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

12.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause the Indemnified Party shall:



- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity in this clause (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

### **13. Data protection**

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor. The annexed Schedule sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 13.3 Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 13.4 Without prejudice to the generality of clause 13.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Law to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall

promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;

- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 13.5 The Customer consents to the Supplier appointing a third party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause.
- 13.6 The Customer agrees that the Supplier may monitor and record calls made through the Supplier's portal for training purposes or to assist with the handling of any complaint

#### **14. Confidentiality**

- 14.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

**15. Limitation of liability**

- 15.1 The Supplier has obtained insurance cover in respect of its own legal liability for claims **not exceeding £1million**. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 15.2 The restrictions on liability in this clause apply to every liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.3 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.4 Subject to clause 15.3 , the Supplier's total liability to the Customer shall not exceed the figure in clause 15.1, £1million.
- 15.5 This clause 15.5 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 15.3 , the types of loss listed in clause 15.5(b) are wholly excluded by the parties.
  - (b) The following types of loss are wholly excluded:
    - (i) loss of profits;
    - (ii) loss of sales or business;
    - (iii) loss of agreements or contracts;
    - (iv) loss of anticipated savings;
    - (v) loss of use or corruption of software, data or information;
    - (vi) loss of or damage to goodwill; and
    - (vii) indirect or consequential loss.

- 15.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 15.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 30 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 15.8 The Supplier shall have no liability for delays or downtime in relation to the provision of Inbound Channels or for lines leased by the Customer or for equipment provided by the Customer or any other third party.
- 15.9 The Supplier shall have no liability for theft or any other loss suffered, directly or indirectly as a consequence of the failure of any services, systems, software or equipment which it supplies to the Customer.
- 15.10 The Supplier shall have no liability for any loss whatsoever where that loss is suffered, directly or indirectly as a consequence of the Customer failing to follow advice given by the Supplier to the Customer.

## **16. Termination**

- 16.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this agreement 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 this agreement;
  - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words

"it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- (d) the other party 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 any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(c) to clause 16.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.2 For the purposes of clause 16.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over any 3 month period during the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.



- 16.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
  - (b) the Customer fails to follow or implement the professional advice of the Supplier;
  - (c) the Customer fails to upgrade their hardware systems to the Suppliers recommended minimum specification;
  - (d) there is a change of Control of the Customer.

**17. Consequences of termination**

17.1 On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied, and the remainder of any minimum term, but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services;
- (d) the Customer shall be responsible for any Supplier or third party porting fees, transfer fees and cancellation fees. Where appropriate the Supplier shall invoice the Customer for these fees and the Customer shall pay the invoice upon receipt; and
- (e) the following clauses shall continue in force: clause 1 (Interpretation), clause 9 (Non-solicitation), clause 12 (Intellectual property rights), clause 14 (Confidentiality), clause 15 (Limitation of liability), clause 17 (Consequences of termination), clause 21 (Waiver), clause 23 (Severance), clause 25 (Conflict), clause 29 (Governing law) and clause 30 (Jurisdiction).

17.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the



right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

18. **Force majeure**

18.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) 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;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
- (i) interruption or failure of utility service.

18.2 Provided it has complied with clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event,



the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 28 days written notice to the Affected Party.

## 19. **Assignment and other dealings**

19.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

19.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

## 20. **Variation**

Subject to clause 10 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 21. **Waiver**

21.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22. **Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. **Severance**

23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. **Entire agreement**

24.1 This agreement 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.

24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

25. **Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Proposal, the provisions of these terms shall prevail.

26. **No partnership or agency**

26.1 Nothing in this agreement 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.



27. **Third party rights**

27.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

28. **Notices**

28.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by 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
- (b) sent by email to the address specified in Proposal.

28.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 28.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

29. **Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

30. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## **Schedule Processing, Personal Data and Data Subjects**

### **1. Processing by the Supplier**

#### **1.1 Scope**

We collect individual data from you in a number of ways using human intervention and technology, including using hardware, software, by people collecting and recording data, by mobile devices and by electronic communications.

#### **1.2 Nature**

We process and store individual data received from you in paper format and electronically. The individual data contains the data set out below and is used by us to provide advice to you and provide the level of service we have agreed with you.

#### **1.3 Purpose of processing**

To fulfil the contractual obligations with you pursuant to this agreement.

#### **1.4 Duration of the processing**

For the term or remaining term set out in the agreement between us.

### **2. Types of personal data**

Data relating to the relationship with your employees, workers and contractors, customers, contacts and clients, for example, name, address, date of birth, NI number, tax information, salary information, telephone numbers, email addresses, gender, next of kin and their contact details, allergy details, health and medical conditions, health and sickness records, marital status, details of dependants, bank account details, payroll records, pension details, benefits details, annual leave allowance, start date, location of employment, copy of driving licence, recruitment information including references and cv, compensation history, performance history, disciplinary and grievance history, CCTV footage, signing in and out information, photographs and IT and communications system use.

### **3. Categories of data subject**

Employees, workers, contractors, Contacts, Customers and Clients.