**Terms and CONDITIONS FOR Business Services (“Conditions”)**

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Contract the following terms have the meanings shown next to them:

**Affiliate** means in relation to any entity, (a) that entity; (b) any subsidiary undertaking or parent undertaking of such entity or a subsidiary undertaking of any such parent undertaking from time to time (as defined by section 1162 of the Companies Act 2006); or (c) any entity controlling, controlled by, or under common control with, the relevant entity or any of the aforementioned parent undertakings or subsidiary undertakings.

**Applicable Laws** means the laws regulations, regulatory policies, guidelines or industry codes in place from time to time which are applicable to the provision of the Services and all other regulations relating to the marketing and supply of the Services.

**Applicable Data Protection Laws** means a) to the extent the UK Data Protection Legislation applies, the law of the United Kingdom or a part of the United Kingdom which relates to the protection of personal data. b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Supplier is subject, which relates to the protection of personal data.

**Artificially Inflated Traffic** means the flow of telephone calls to any particular revenue share service which is, as a result or consequence of any activity by or on behalf of the Customer, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the Services.

**Authority** means a regulatory or government or other competent authority including but not limited to Ofcom or similar authority and their successors from time to time.

**Business Day** means any day between Monday and Friday, excluding bank and public holidays in England when banks in London are open for business.

**Charge(s)** means all charge(s) (including, without limitation, the Initial Charge, Rented Equipment Monthly Rent, Purchased Equipment Charge, Monthly Services Charge and Licence Fees) and any other amounts payable by the Customer under this Contract.

**Commissioner** means the Information Commissioner (see section 114, DPA 2018).

**Conditions** mean these Terms and Conditions for Supplier Business Services.

**Confidential Information** meansall confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its “**Representatives**”) to the other Party and that Party's Representatives in connection with this Contract which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Contract** means the agreement between Supplier and the Customer comprising the following documents, in the following order of precedence: the Order Form; any applicable Flow Down Terms, these Conditions, any Service Schedules and any appendices; and/or other documents expressly incorporated in writing between the Parties.

**Customer** means the customer as identified on the Order Form.

**Customer Agreement** means the customer agreement, which is a direct agreement between the Customer and Microsoft and it is a condition of the ‘Cloud Solution Provider Program’ that the Customer enters into the Customer Agreement, the terms of which are found at https://[www.microsoft.com/licensing/docs/customeragreement](http://www.microsoft.com/licensing/docs/customeragreement) and which may be updated from time to time.

**Customer Equipment** means any equipment, including any hardware, software, systems, cabling or facilities provided by the Customer and used directly or indirectly in the provision of the Services.

**Customer Personal Data** means any personal data which Supplier processes in connection with this Contract, in the capacity of a processor on behalf of the Customer.

**Documentation** means the then current User guides, if any, that are provided by the Supplier for use with the Services**.**

**Delivery Point** means the delivery location for Purchased Equipment and/or Rented Equipment agreed between the Customer and Supplier in writing.

**Developed Materials** means all materials developed by Supplier (or its sub-contractors) exclusively for the Customer pursuant to the Contract, including all IPR therein.

**Early Cancellation Charge** means the charge applicable to the Customer for cancelling the Contract before the Services Start Date as detailed at clause 11.1.2.

**Early Termination Charge** means the charge applicable to the Customer for terminating all or part of the Contract after the Services Start Date but before the Minimum Contract Term expiry date as detailed at clause 11.3.

**Effective Date** means the date of signature of this Contract.

**EU GDPR** means the General Data Protection Regulation ((EU) 2016/679).

**Finance Arrangement** has the meaning given to it in clause 8.3.

**Flow Down Terms** means any terms and conditions applicable toServices provided under this Contract by a Third Party and appended to this Contract or provided to the Customer by the Supplier from time to time.

**Gateway** means any device(s) containing one or more SIMs for one or more mobile networks and which enables the automatic routing of calls to mobile networks, landlines or to generate short message service (“**SMS**”) text(s).

**Initial Charge** means the sum of the initial Rented Equipment Monthly Rent and/or Monthly Services Charge as detailed on the Order Form.

**Intellectual Property Rights** or **IPR** means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

**Licenced User Agreement** means those terms and conditions applicable to the use of any software (including any Third Party software) by the Customer that is licenced to the Supplier by the licensor as set out in the Order Form. The right to use such software and the applicability of any Licensed User Agreement is subject to the Customers understanding of, compliance with, and if required, prior written consent to the terms and conditions set out in the applicable Licenced User Agreement, as varied from time to time.

**Licence Fees** has the meaning given to it in clause 16.1.

**Minimum Contract Term** means the minimum term over which the Services will be provided to the Customer which is thirty-six (36) months, or as otherwise stated on the Order Form or any Finance Arrangement and commences on the Services Start Date.

**Office Hours** means between 9.00am and 5.30pm local UK time on Business Days.

**Order Form** means the order form which sets out the Services under separate cover and which incorporates the Conditions.

**Password Policy** means the Supplier password policy as available on www.sipcom.com under Policies and as may be amended from time to time.

**Privacy Policy** means the Supplier privacy policy as available on www.sipcom.com under Policies and as may be amended from time to time.

**Purchased Equipment** means the equipment described and itemised in the Order Form under ‘Purchased Equipment’.

**Renewal Term** has the meaning given to it in clause 2.2.

**Rented Equipment** means the equipment described and itemised in the Order Form under ‘Rented Equipment’.

**Rented Equipment Monthly Rent** means the monthly recurring charge as specified in the Order Form.

**Services** means the services or part of the service or equipment that is ordered by the Customer and specified in the Order Form.

**Service Catalogue** means a document that describes the specifications of the Services or part of the Services provided by Supplier on request or available on the Supplier or Third Party website.

**Service Level Agreement** or **SLA** means the standard service levels set out by Supplier describing how performance of the Services is delivered and monitored by Supplier.

**Service Schedule(s)** means any applicable schedule to these Conditions that provide specifications of the Services and provided by the Supplier to the Customer and updated from time to time. This includes the Service Catalogue(s) and the Service Level Agreement.

**Services Start Date** means the date on which the Services are first made available to the Customer by Supplier.

**SIM** means a “Subscriber Identity Module” which allows access to a mobile network when used with Supplier or Customer Equipment in relation to the Services.

**Site** means the Customer site(s) at which Supplier provides Services, as specified in the Order Form or in subsequent variations to the Order Form.

**Supplier** means SIP Communications Limited a company registered in England and Wales under 05759363 and whose registered office is Lowry Mill, Lees Street, Swinton, Manchester M27 6DB England.

**Supplier Group** means Supplier and its Affiliates from time to time.

**Supplier IPR** means IPR owned by or licensed to the Supplier Group (including without limitation and software proprietary to Supplier Group and more fully identified in the Order Form and relevant Service Schedule.

**Term** has the meaning given to it in clause 2.2.

**Third Party** means a vendor, individual or entity, other than Supplier, that provides a service to Supplier or the Customer (either directly or indirectly through Supplier).

**Third Party Conditions** has the meaning given to it in clause 6.16.

**Third Party IPR** means IPR owned by a person other than Customer or Supplier Group.

**Third Party Software** meansany third party software as specified in the Order Form, to be provided to the Customer by Supplier pursuant to this Contract.

**UK Data Protection Legislation** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); 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.

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**User** means anyone who is permitted by the Customer to use or access the Services.

**User Security Details** means any IDs, usernames, personal identification numbers and passwords.

**VAT** means value added tax or any equivalent tax chargeable in the UK or elsewhere (as applicable).

**Virus** means without limitation, any malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Third Party Software and or the Services.

* 1. In this Contract unless the context otherwise requires:
     1. “**writing**” or “written” includes email;
     2. a statute or a provision of a statute is a reference to it as amended, extended or re-enacted from time to time;
     3. this “**Contract**” is a reference to this Contract and each of the Appendices as amended or supplemented at the relevant time;
     4. references to clauses and Appendices are to the clauses and Appendices of this Contract and references to paragraphs are to paragraphs of the relevant Appendix; and
     5. a "**Party**" or the "**Parties**" refer to the parties to this Contract.
  2. The headings used in this Contract are for convenience only and shall have no effect upon the interpretation of this Contract.
  3. References to either gender shall include any other gender.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  5. Any words following the terms **including**, **include**, **in particular** 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.

1. **TERM AND COMMENCEMENT** 
   1. The Contract commences on the Effective Date and continues until terminated by either Party in accordance with this Contract.

* 1. Upon expiration of the Minimum Contract Term, this Contract shall automatically renew for an additional successive twelve (12) month term unless either party provides written notice of non-renewal at least ninety (90) days prior to the end of the then current term (each a "**Renewal Term**" and together with the Minimum Contract Term, the "**Term**"), or unless sooner terminated as provided in clause 11. If the Term is renewed for any Renewal Terms pursuant to this clause, the terms and conditions of this Contract during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the Charges payable hereunder by the Customer during the applicable Renewal Term as set forth in clause 8. If either party provides notice of its intent not to renew this Contract in accordance with this clause, then, unless otherwise sooner terminated in accordance with its terms, this Contract shall terminate on the expiration of the then current Term.
  2. The Services commence on the Services Start Date. Where the Services are delivered in phases the Services Start Date shall also be phased.

1. **PURCHASED EQUIPMENT** 
   1. Where specified in the Order Form, Supplier shall sell to the Customer and Customer shall purchase from Supplier the Purchased Equipment in the quantities and at the prices as set out in the Order Form and subject to the terms and conditions of this Contract.

**Delivery**

* 1. The Purchased Equipment will be delivered within a reasonable time after the Effective Date, subject to availability of Purchased Equipment. For the avoidance of doubt, any delivery dates are estimates only and time shall not be of the essence in respect of such delivery. Supplier shall not be liable for any delays, loss, or damage in transit and any delays shall not entitle the Customer to refuse delivery.
  2. Supplier shall have no liability for any failure or delay in delivering the Purchased Equipment to the extent that it is caused by the Customer’s failure to comply with its obligations under this Contract.
  3. Supplier shall deliver the Purchased Equipment to the Delivery Point using Supplier's standard methods for packaging and shipping. Customer shall take delivery of the Purchased Equipment upon arrival at the Delivery Point. All Charges are inclusive of shipping costs unless stated otherwise on the Order Form.
  4. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Purchased Equipment to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the Purchased Equipment shipped whether such shipment is in whole or partial fulfilment of the quantity purchased under this Contract.
  5. If the Customer fails to accept delivery of the Purchased Equipment on the delivery date, then, except where such failure is caused by Supplier’s failure to comply with its obligations under this Contract:
     1. The Purchased Equipment shall be deemed to have been delivered at 9.00am on the delivery date; and
     2. Supplier shall store the Purchased Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

**Title and Risk**

* 1. Risk passes to the Customer upon delivery of the Purchased Equipment at the Delivery Point. As collateral security for the payment of the purchase price of the Purchased Equipment, the Customer hereby grants to Supplier a lien on and security interest in and to all of the right, title, and interest of the Customer in, to, and under the Purchased Equipment, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.
  2. Title to Purchased Equipment shall only pass to the Customer once payment in full has been received by Supplier. Until title to the Purchased Equipment has passed to the Customer, the Customer is fully responsible for the safe keeping and maintenance of that Purchased Equipment and keep them insured on Supplier’s behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier.

**Warranties**

* 1. Supplier warrants that the Purchased Equipment will be new (except where otherwise specified on the Order Form) and shall conform to Supplier’s and/or Third Party specifications (available upon request). As far as it is able, Supplier will pass on to the Customer the benefits of any warranties given by any third-party manufacturer in relation to any Purchased Equipment.

* 1. Supplier shall not be liable for a breach of the warranty set forth in clause 3.9 unless: (i) the Customer gives written notice of the defect, reasonably described, to Supplier within five (5) Business Days of the time when the Customer discovers or ought to have discovered the defect; (ii) Supplier is given a reasonable opportunity after receiving the notice to examine such Purchased Equipment and the Customer (if requested to do so by Supplier) returns such Purchased Equipment to Supplier at Supplier's cost for the examination to take place there; and (iii) Supplier reasonably verifies the Customer's claim that the Purchased Equipment is defective.

* 1. Supplier shall not be liable for a breach of the warranty set forth in clause 3.9 if: (i) the Customer makes any further use of such Purchased Equipment after giving notice in accordance with clause 3.10; (ii) the defect arises because the Customer failed to follow Supplier's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Purchased Equipment; (iii) the Customer tampers with, alters or repairs such Purchased Equipment without the prior written consent of Supplier; or (iv) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

* 1. Subject to clauses 3.10 and 3.11 above, with respect to any such Purchased Equipment during any applicable warranty period, Supplier shall, in its sole discretion, identify whether the Purchased Equipment is still subject to a warranty period and either: (i) repair or replace such Purchased Equipment (or the defective part(s)) or (ii) credit or refund the price of such Purchased Equipment at the pro-rata contract rate, provided that if Supplier so requests, the Customer shall, at Supplier's expense, return such Purchased Equipment to Supplier.
  2. Clause 3.12 above sets out Supplier’s entire liability for breach of the warranty in clause 3.9 and once it has complied with clause 3.12, Supplier shall have no further liability to the Customer in respect of the warranty in clause 3.9.

1. **RENTED EQUIPMENT**
   1. Where specified in the Order Form, Supplier agrees to rent to the Customer, and the Customer agrees to rent from Supplier, the Rented Equipment in the quantities and at the prices as set out in the Order Form and subject to the terms and conditions of this Contract.
   2. The Customer shall not remove the Rented Equipment from the Delivery Point without prior written approval of Supplier. The Customer shall allow Supplier or its duly authorised representative to enter the Site, Delivery Point or any premises at which the Rented Equipment may be located at all reasonable times to locate, inspect, maintain or remove the Rented Equipment.
   3. The Customer shall at its expense keep and maintain the Rented Equipment in a good state of repair, normal wear and tear excepted, and shall use the Rented Equipment only for its intended purpose and follow Supplier's instructions regarding the use and maintenance of the Rented Equipment. Where Supplier provides Rented Equipment to the Customer for use during the Contract the Customer is fully responsible, at its own expense, for the safe keeping, maintenance and insurance of that Rented Equipment.

**Rent**

* 1. In consideration of the Customer's right to possess and use the Rented Equipment during the Term, the Customer shall pay the Rented Equipment Monthly Rent in advance during the Term as detailed in clause 8.

* 1. Upon termination of the Contract, if the Customer does not return the Rented Equipment to Supplier in accordance with clauses 4.17 and 4.18, the Customer shall continue to comply with all the terms and conditions of this Contract, and pay to Supplier one hundred and twenty-five percent (125%) of the prorated daily Rented Equipment Monthly Rent for each day from the end of the Term until the date on which the Customer returns such Rented Equipment to Supplier in the manner required under clauses 4.17 and 4.18 ("**Holdover Rent**"). The Customer shall not construe anything contained in this clause 4.5, including the Customer's payment of Holdover Rent, as Supplier’s (a) waiver of the Customer’s failure to perform any obligation under this Contract; or (b) assent to any Renewal Term of this Contract.

**Delivery**

* 1. The Rented Equipment will be delivered within a reasonable time after the Effective Date, subject to availability of Rented Equipment. For the avoidance of doubt, any delivery dates are estimates only and time shall not be of the essence in respect of such delivery. Supplier shall not be liable for any delays, loss, or damage in transit and any delays shall not entitle the Customer to refuse delivery.
  2. Supplier shall have no liability for any failure or delay in delivering the Rented Equipment to the extent that any failure or delay is caused by the Customer’s failure to comply with its obligations under this Contract.
  3. Supplier shall deliver the Rented Equipment to the Delivery Point using Supplier's standard methods for packaging and shipping. Customer shall take delivery of the Rented Equipment upon arrival at the Delivery Point. All prices are inclusive of shipping costs.
  4. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Rented Equipment to Customer. The Customer shall pay for the Rented Equipment shipped whether such shipment is in whole or partial fulfilment of the quantity rented under this Contract.
  5. If the Customer fails to accept delivery of the Rented Equipment on the delivery date, then, except where such failure is caused by Supplier’s failure to comply with its obligations under this Contract:
     1. The Rented Equipment shall be deemed to have been delivered at 9.00am on the delivery date; and
     2. Supplier shall store the Rented Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including, without limitation, insurance).

**Title and Risk**

* 1. Title to the Rented Equipment shall at all times remain with Supplier throughout the Term, and the Customer shall acquire no right, title, or interest in the Rented Equipment (save the right to possession and use of the Rented Equipment subject to the terms and conditions of this Contract). The Customer shall not pledge or encumber the Rented Equipment in any way or allow the creation of any mortgage, charge, lien or other security interest in respect of it and shall not (a) remove, deface or obscure any identifying mark or packaging on or relating to such Rented Equipment; and/or (b) attach any Customer insignia or mark onto such Rented Equipment.
  2. The risk of loss, theft, damage or destruction of the Rented Equipment shall pass to the Customer on delivery. The Customer shall bear all risk of loss, damage, destruction, theft, and condemnation to or of the Rented Equipment from any cause whatsoever ("Loss") until the Rented Equipment has been returned to Supplier to the destination specified in clause 4.17. The Customer shall notify Supplier immediately in writing of any such Loss.

**Limited Warranty**

* 1. Supplier shall replace the Rented Equipment with identical or similar equipment if the Rented Equipment fails to materially operate in accordance with Supplier’s specifications as set out in the Service Schedule and operating instructions (available upon request). Such replacement shall be made as soon as practicable after the Customer returns the non-conforming Rented Equipment. The Customer shall return all non-conforming Rented Equipment at its expense and risk of loss to Supplier to the destination specified by Supplier. Third Party products, hardware or software contained in, incorporated into, attached to, or packaged together with, the Rented Equipment are not covered by the above limited warranty.
  2. The limited warranty above does not apply where the Rented Equipment has been subjected, by Customer and/or any third party, to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any specifications or instructions issued by Supplier or the manufacturer, or used with any Third Party product, hardware, software, or product that has not been previously approved in writing by Supplier.

**Customer Responsibilities for Rented Equipment**

* 1. The Customer shall during the Term:
     1. ensure that the Rented Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
     2. take such steps (including compliance with all safety and usage instructions provided by Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Rented Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
     3. make no alteration to the Rented Equipment and shall not remove any existing component (or components) from the Rented Equipment without the prior written consent of Supplier unless to comply with any mandatory modifications required by Applicable Laws or any Authority or unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Rented Equipment shall vest in Supplier immediately on installation;
     4. keep the Rented Equipment at all times at the Delivery Point and shall not move or attempt to move any part of the Rented Equipment to any other location without Supplier’s prior written consent;
     5. maintain operating and maintenance records of the Rented Equipment and make copies of such records readily available to Supplier, together with such additional information as Supplier may reasonably require;
     6. not, without the prior written consent of Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Rented Equipment;
     7. not without the prior written consent of Supplier, attach the Rented Equipment to any land or building so as to cause the Rented Equipment to become a permanent or immovable fixture on such land or building. If the Rented Equipment does become affixed to any land or building then the Rented Equipment must be capable of being removed without material damage to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Rented Equipment from any land or building and indemnify Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
     8. not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of Supplier in the Rented Equipment and, where the Rented Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that Supplier may enter such land or building and recover the Rented Equipment both during the term of this Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Supplier of any rights such person may have or acquire in the Rented Equipment and a right for Supplier to enter onto such land or building to remove the Rented Equipment;
     9. not suffer or permit the Rented Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Rented Equipment is so confiscated, seized or taken, the Customer shall notify Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Rented Equipment and shall indemnify Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  2. The Customer acknowledges that Supplier shall not be responsible for any loss of or damage to the Rented Equipment arising out of or in connection with any negligence, misuse, mishandling of the Rented Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify 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 reasonable professional costs and expenses) suffered or incurred by Supplier or arising out of, or in connection with any failure by the Customer to comply with the terms of this Contract in connection with the Rented Equipment.

**Obligation to Return Rented Equipment**

* 1. The Customer shall at its cost, at its risk and expense, on expiry or termination of the Contract, however caused, (a) deinstall, inspect, and properly pack the Rented Equipment; and (b) promptly return the Rented Equipment, freight prepaid, to Supplier, or any other third-party that Supplier may nominate, by delivering the Rented Equipment on board such carrier as Supplier may specify.

* 1. The Customer shall cause the Rented Equipment returned for any reason under this Contract to (a) be free and clear of all mortgages, liens (other than liens of Supplier), other security interests and rights of third parties; (b) be in the same condition as when delivered to the Customer, ordinary wear and tear excepted; (c) free from Viruses; (d) Customer data removed (wiped) and (e) be in compliance with Applicable Laws.
  2. The Customer shall notify Supplier immediately in writing in the event of any loss or damage to any Rented Equipment and remain responsible for the full cost to Supplier of replacing such Rented Equipment
  3. In the event that Customer fails to promptly return the Rented Equipment to Supplier in accordance with clause 4.17(b), the Customer shall pay to Supplier on demand any costs and expenses incurred by Supplier in recovering the Rented Equipment from the Site, Delivery Point or any premises at which the Rented Equipment may be located.

1. **PROVISION OF THE SERVICE**

**Site Preparation, Access, Delivery and Installation**

* 1. In the event the Supplier required access to the Site for the purposes of performing its obligations under this Contract, the following terms shall apply:
     1. The Customer agrees to prepare the Site according to any reasonable instructions Supplier may give and to provide Supplier with reasonable access to the Site for the purposes of performing its obligations under this Contract.
     2. The Customer agrees to provide, at its expense, a suitable place and conditions for Purchased Equipment and/or Rented Equipment, and, where required, continuous mains electricity supply and other service connections and environmental conditions as may be specified by Supplier or set out in the manufacturer’s literature.
     3. If the Customer connectivity method utilises the Customer’s Third Party public internet, it is the Customers responsibility to ensure the connectivity is suitable for the Services and fit for purpose and Supplier shall have no liability for any failure or delay in providing the Services, in whole or in part, due to the unsuitability of such connectivity.
     4. The Customer and Supplier shall meet each other’s reasonable safety and security requirements when on the Site. If the Customer or Supplier damages the other’s equipment while on Site, it must repair or replace the damaged equipment as soon as reasonably practicable.
     5. The Customer shall be responsible for restoring the Site, after any access and installation has been undertaken by Supplier at the Site.
     6. The Customer shall obtain any permission, to include Third Party wayleaves and the like, needed for Supplier to install the Purchased Equipment and/or Rented Equipment on the Site, Delivery Point or any premises at which the Rented Equipment may be located.
  2. The Customer shall bear any installation charges not agreed or identified in the Order Form including third-party installation charges prior to the associated work being undertaken. Any costs associated with any delays experienced as a result of the failure to agree these additional charges with the Supplier will also be the responsibility of the Customer.
  3. Supplier shall usereasonable endeavors to provide the Services by the estimated Service Start Date with the Customer, but, for the avoidance of doubt, such date shall be an estimate only and time shall not be of the essence in relation to any performance and/or delivery dates, and Supplier shall have no liability in respect of any late performance and/or delivery. The Customer shall use all reasonable endeavours to ensure the estimated Service Delivery Date can be met.
  4. The Customer shall not permit or make without limitation any attempt to disassemble, deconstruct, break down, hack or otherwise interfere with any Rented Equipment and shall comply with clause 16 in respect of any applicable Third Party Software.

**Subcontractors**

* 1. Supplier may, at its sole discretion, perform any of the Services by or through a Third Party.

**Services Availability**

* 1. Subject to the terms of this Contract, Supplier shall use reasonable endeavours to make the Services available in accordance with the SLA referenced on the Order Form.

**Scheduled Downtime and Emergency Maintenance**

* 1. Subject always to the applicable Third Party Conditions, the Supplier shall use reasonable endeavours to schedule downtime for routine maintenance or updates to the Services on days and at times that cause the minimum disruption to any Supplier services. In the event Supplier believes that this downtime may cause disruption to the Customer’s Services it shall provide the Customer with twenty-four (24) hours prior notice of all scheduled outages of the Services.
  2. In the event emergency maintenance is required the Supplier shall use reasonable endeavors to notify the Customer at the earliest opportunity, however given the nature of the maintenance this may not be in advance.

**Faults and Interruption to Services**

* 1. Supplier is unable to warrant that the Services will be uninterrupted or error free and the Customer understands and agrees that from time-to-time faults and/or Services interruptions may occur.
  2. If the Customer reports a fault or interruption in the Services, Supplier shall use reasonable endeavours to repair the fault or interruption in accordance with the timeframes set out in the SLA. For the avoidance of doubt, all timeframes set out in the SLA shall be estimates only and time shall not be of the essence in relation to such timeframes.

* 1. If Supplier agrees to work outside Office Hours, or if the Customer reports a fault and Supplier determines there is no fault, or that the Customer has directly or indirectly caused the fault, Supplier, in its sole discretion, may apply an additional support charge in accordance with Supplier’s then current rate card (available on request) charged as set out in clause 5.13.
  2. In the event the fault is caused by a Third Party, Supplier shall use reasonable endeavours to facilitate the resolution of the fault or interruption, however, the Customer agrees that Supplier shall not be liable for any delays caused by the Third Party.
  3. If the Customer requests a service call out from a Third Party arranged by Supplier then the Customer accepts that in the event this service is chargeable and/or no fault is found, the Customer shall be charged for the call out at a rate based on the applicable Third Party cost plus an additional 20% to cover Supplier’s administrative expenses charged as set out in clause 5.13.

**Rented Equipment Maintenance**

* 1. Supplier shall:
     1. provide routine maintenance and repair to the Rented Equipment during Office Hours and upon reasonable prior notice to the Customer, as may be required by the manufacturer’s guidelines;
     2. use its commercially reasonable endeavours to respond to Customer service requests in accordance with the SLA, provided that time shall not be of the essence in respect of such response times; and
     3. if requested in writing, train up to two (2) Customer employees to use the Rented Equipment correctly.

* 1. If a service call identifies that the problem is as a result of lack of maintenance and/or cleaning on the Customer’s part, the Rented Equipment being physically moved, improper use or damage resulting from attempts by persons other than Supplier or Supplier’s representatives, the Customer shall be charged for the call out in accordance with clause 8.2.
  2. The maintenance and repair service does not apply to items classed by the manufacturer as a consumable, the provision of which shall be subject to availability.
  3. If the Customer requests a service call out and no fault is found, or if it relates to routine operation of the Rented Equipment, the Customer shall be charged for the call out in accordance with clause 8.2.

* 1. On expiry of the warranty applicable to the Rented Equipment or any part of the Rented Equipment, Supplier shall charge the Customer for the cost of all parts and labour used in maintaining and or servicing the Rented Equipment. Parts are charged at cost plus 20% and labour will be charged as set out in clause 5.13.

1. **REGULATIONS AND USE OF THE SERVICE** 
   1. Any Customer Equipment must be:
      1. technically compatible with the Services and not harm Supplier’s network, Third Party network or another customer’s equipment;
      2. connected using the applicable Supplier network termination point or other Supplier approved process, and used in compliance with any relevant Supplier instructions, standards or Applicable Laws; and
      3. adequately protected against Viruses and other breaches of security.

**Proper use**

* 1. The Services must not be used:
     1. in any way that is unlawful or in contravention of any licence, code of practice, instructions or guidelines issued by an Authority, third party’s rights or any applicable acceptable use policy; or
     2. to send, communicate, knowingly receive, upload, download or use any material or make any calls that are offensive, abusive, indecent, defamatory, obscene, menacing, cause annoyance, inconvenience, needless anxiety or are intended to deceive; or
     3. to establish, install, operate or use a Gateway; or to participate in any other activity or conduct which may result in Artificially Inflated Traffic; or
     4. in any way Supplier reasonably considers is or is likely to be detrimental to the provision of the Services to the Customer or service to any of Supplier’s other customers.
  2. The Customer shall comply with Supplier’s reasonable instructions regarding security or safety of the Services.

**Security**

* 1. The Customer is responsible for the proper use of the User Security Details, if any, and must take all necessary steps to ensure they are kept confidential, secure and not made available to unauthorised persons in accordance with the Supplier’s Password Policy, (a copy of which is available at www.sipcom.com).
  2. If the Customer believes that any User Security Details are or are likely to be used in an unauthorised way, the Customer must inform Supplier immediately. The Customer must not change or attempt to change a User name without Supplier’s prior agreement.
  3. Supplier does not guarantee the security of the Services against unauthorised or unlawful access or use. If Supplier believes there is or is likely to be a breach of security or misuse of the Services, Supplier may:
     1. change and/or suspend the User Security Details (and notify the Customer that it has done this); or
     2. require the Customer to change the User Security Details.

**Internet Access**

* 1. Where the Services allow access to the internet the Customer understands and agrees that the use of the internet is at the Customer’s own risk.

**Operations**

* 1. Occasionally Supplier may:
     1. change the telephone numbers given to the Customer when instructed to do so by an Authority or Third Party that controls the numbers, or the way Supplier provides the Services, provided that any change to the way Supplier provides the Services does not significantly, in the reasonable opinion of Supplier, affect the performance or functionality of the Services; or
     2. interrupt or suspend all or part of the Services, without prior notice:
        1. to comply with an order, instruction or request of any Authority;
        2. if the ability of Supplier and/or a Third Party to connect to any Customer Equipment or Rented Equipment, or any third party services, network or software is withdrawn or compromised or suspended for any reason;
        3. where it reasonably believes the Customer is in breach of clause 6.2 and/or clause 6.3;
        4. if Supplier has a right to terminate this Contract in accordance with clause 11.
        5. where a Third Party suspends, limits or interrupts the Services (in whole or in part) as a result of the acts or omissions of the Customer;
        6. as otherwise set out in any relevant Service Schedule;
        7. following, where reasonably practicable, prior notice to make any change, modification, enhancement, replacement of or additions to any Services in accordance with clause 10;
        8. where Supplier, or a Third Party, in its sole opinion, suspects fraudulent telephone activity; and
        9. following, where reasonably practicable, prior notice, to undertake planned or emergency maintenance or testing.
  2. In the event that Supplier interrupts or suspends all or part of the Services in accordance with clause 6.8.2, Supplier shall use reasonable endeavours to restore the Services as soon as reasonably practicable once the issue that caused such interruption or suspension has been resolved.
  3. Any period during which the Services are suspended, interrupted or limited in accordance with clauses 6.8, 0, 11.7 shall not be taken into account in the calculation of any Services compliance with any applicable Service Level Agreement and the Customer shall remain liable for all Charges during this period.
  4. Supplier shall be entitled, by giving the Customer such advance notice as is reasonably practicable, to change, modify, enhance, replace or make additions to any of the Services to accommodate:
     1. changes that are mandatory, as a result of direction or communications from a Third Party and/or Authority;
     2. upgrades and updates to the licences and/or software that form part of the Services; and
     3. any other changes made to the Service Catalogue that Supplier believes in its absolute discretion is reasonable to ensure the Services remain up to date, reliable, secure and suitable for use for its customers.

**Telephone Numbers**

* 1. Subject to Applicable Laws and the Authority, the Customer can transfer numbers to Supplier to use with the Services or acquire numbers from Supplier to use with the Services. However, if the Customer wants to transfer numbers to a new service provider at any time, then an administrative charge per number, in accordance with Supplier’s then current rate card (available on request), will be payable by the Customer to Supplier prior to the transfer process commencing. Thereafter Supplier will promptly deal with the number transfer request.
  2. The Supplier will, when provisioning any telephone numbers, always utilise the appropriate Site address associated with the telephone numbers when populating the required emergency location details with the applicable number provider, unless the Customer provides written notice of any other applicable location address for the User. The Customer is fully responsible for providing and maintaining accurate emergency location details of all Users of the Services, including telephone numbers, and these details must be provided to the Supplier prior to the Services Start Date and any subsequent changes must be promptly notified by the Customer to Supplier in writing. The Supplier cannot accept any liability for the Customers failure to provide this information.
  3. The Services provided by Supplier are configured to make and receive local, national, special rate, including emergency services, freephone and non-geographic numbers, and international calls and is dependent on the in-country local telecommunications operator. Supplier will make all reasonable endeavours to ensure this service is always fully available, but it cannot guarantee this and cannot be liable for any non-availability or service limitations caused by a Third Party delivering elements of the Services.
  4. Given the limitations of the Supplier network some in-country local telecommunications operators will not provide access to certain in country local number facilities (including, without limitation, emergency services, freephone and non-geographic numbers). In this instance, Supplier will identify this to the Customer and provide limited functionality numbers if requested by the Customer in writing to do so.

**Third Party Conditions**

* 1. Supplier may, with the prior knowledge of the Customer, utilise a Third Party to deliver elements of the service. Such Third Party’s typically have end user conditions including, but not limited to, Flow Down Terms and Licenced User Agreements as set out in the applicable Order Form, that will apply to the Customer and as such are incorporated within and may take precedence over this Contract (“**Third Party Conditions**”). The Customer and/or User shall accept the Third Party Conditions prior to the Services being activated and such acceptance of the Third Party Conditions is a condition of such Services being provided.

1. **CUSTOMER OBLIGATIONS**
   1. The Customer shall:
      1. ensure it has suitable licences in place for any third party software required (which is not procured or provided by the Supplier) to allow the Supplier and its subcontractors to provide the Services;
      2. co-operate with Supplier in the provision of the Services;
      3. provide, in a timely manner, access to such information, data, premises, personnel, office accommodation and other facilities as Supplier may reasonably require for the performance of the Services;
      4. allow Supplier the use of the Customer Equipment to the extent necessary to enable it to provide the Services;
      5. ensure the Customer Equipment and IT system is Virus free;
      6. ensure that it has access to a fast and resilient internet service;
      7. be responsible (at its own cost and expense, unless otherwise agreed) for preparing the Site(s) for the supply of the Services;
      8. promptly notify Supplier in writing of any changes to the number of Users or to the Customer System, any such change to be made pursuant to this Contract;
      9. ensure that payment on all manufacturing warranties relating to the Customer Equipment (and each element thereof) is up to date;
      10. ensure the operability of its Customer Equipment in line with industry standards and vendor original equipment manufacturer (OEM) guidelines;
      11. where a Microsoft Cloud service is deployed / utilised within the Services (Azure, Enterprise Mobility Suite or Office365) Supplier will be assigned to the cloud subscription(s) as the Claiming Partner of Record and Digital Partner of Record (as defined by Microsoft) for a minimum of twelve (12) months from advanced completion date;
      12. maintain and allow Supplier continuous global admin access to the Customer’s relevant Microsoft cloud services portals for the duration of this Contract, where this is required by the Supplier to deliver the Services; and
      13. shall comply with the terms of any Third Party Conditions (if applicable); and
      14. where necessary, support Supplier with escalations and resolution of incidents in accordance with Third Party service levels detailed in the relevant Appendix (where applicable).
   2. In the event that Supplier requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the Services or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.
   3. If any consents, licences or other permissions are needed from any third parties (such as, without limitation, software or hardware licensors, landlords, local authorities) to enable Supplier to provide the Services, it shall be the Customer’s responsibility to obtain the same in advance of the Services Start Date and for the Term.
   4. The Customer acknowledges that Supplier’s provision of the Services in accordance with this Contract is subject to the Customer’s fulfilment of its obligations under this Contract. Supplier shall not be in breach of this Contract and shall not be liable for any failure to deliver the Services or perform its obligations under this Contract to the extent that such failure is caused by the Customer’s (or a third party, on behalf of the Customer’s) failure to fulfil any of its obligations under this Contract, provided that Supplier:
      1. has notified the Customer of such failure or anticipated failure and its likely effect on the provision of the Services and/or on the ability of Supplier to perform its obligations under this Contract; and
      2. used reasonable endeavours to mitigate the effect of such failure or anticipated failure and, where possible, to continue to perform its affected obligations.
   5. The Customer agrees and acknowledges the terms of the applicable Licenced User Agreements, Customer Agreement and that such terms shall form part of this Contract. For the avoidance of doubt, in the event the applicable Licenced User Agreement Licenced User Agreements and/or Customer Agreement is not applicable to the Services being received or delivered by Supplier to the Customer under this Agreement, such agreements shall not apply.
   6. Customer agrees to comply with all Applicable Laws and hereby agrees to indemnify and hold Supplier harmless against any claim for loss, damage, cost, expenses injury or death to Supplier and/or third parties caused by Customer’s failure to comply with any such Applicable Laws.
   7. **Prevention of corruption and anti-bribery and anti-human trafficking**
      1. The Customer shall:
         1. comply with all Applicable Laws relating to (i) anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“**Anti-Bribery Requirements**”) and (ii) anti-slavery and anti-human trafficking (“**Anti-Slavery Requirements**”) including the Modern Slavery Act 2015;
         2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
         3. have and shall maintain in place throughout the Term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010 and Modern Slavery Act 2015 to ensure compliance with the Anti-Bribery Requirements and the Anti-Slavery Requirements and will enforce them where appropriate;
         4. promptly report any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Contract;
         5. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
         6. require that each of its direct subcontractors and suppliers shall comply with the Anti-Slavery Requirements and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
         7. implement a system of training for its employees to ensure compliance with the Anti-Slavery Requirements; and
         8. keep a record of all training offered and completed by its employees to ensure compliance with the Anti-Slavery Requirements and shall make a copy of the record available to the other Party on request.

1. **CHARGES AND PAYMENTS**

**General**

* 1. Charges for the Services are as detailed on the Order Form and calculated using the details provided by the Supplier. Some Charges may be subject to survey and additional Charges which can only be determined, and subsequently agreed with the Customer prior to the Services Start Date, may apply. Other charges that may apply are set out in the relevant Contract documents.

* 1. If not specifically itemised and costed separately on the Order Form, any usage or non-recurring Charges (excluding inclusive usage charges) that are incurred by the Customer whilst utilising the Services (including, but not limited to, telephone calls, call out charges, repairs), will be chargeable at the Charge communicated by the Supplier at the time or at the standard Supplier then current rate card (available on request), as applicable.
  2. In the event that the Services include Rented Equipment, Supplier may, at its sole discretion, choose to finance such Rented Equipment either internally or through an external third party funder (the “**Finance Arrangements**”), subject to such Finance Arrangements being communicated to the Customer in writing. Where Finance Arrangements are applicable to this Contract certain specific clauses within this Contract shall apply including clauses 8.4, 11.1, 11.3, 11.6, 0, 20.1, 20.9.
  3. The Service Start Date applicable to the Finance Arrangements will be when the applicable Rented Equipment and related Services are delivered or when any fees payable by Supplier, or third party funders, in respect to agreed finance settlements are paid by Supplier.
  4. The Initial Charge detailed on this Order Form is payable to Supplier on receipt of the Initial Charge invoice which will be issued promptly to the Customer following the Effective Date and is in addition to any other charge and is not refundable.
  5. The Customer is responsible for and must pay the Charges for the Services, including any usage charges, whether the Services is used by the Customer or someone else with or without the permission of the Customer.
  6. Supplier shall send the invoices via email to the email address notified by the Customer to Supplier. Unless otherwise stated on this Order Form, Supplier shall, following the issue of the Initial Charge invoice, send its next invoice normally within fourteen (14) days of the Effective Date and then at monthly intervals thereafter. Sometimes Supplier may send the Customer an invoice at a different time.
  7. The Customer shall be liable for Charges for the Services from the Services Start Date, unless otherwise stated in the Order Form. Time for payment for amounts due under this Contract shall be of the essence. The Customer shall pay Charges and all other amounts due in full on the due date in cleared funds without set off, deduction, withholding and/or counterclaim on any grounds whatsoever.
  8. Unless otherwise stated in the Order Form the Customer agrees to pay monthly:
     1. in advance for subscription, rental, and other recurring charges (including inclusive usage charges); and

* + 1. in arrears for usage (excluding inclusive usage charges), connection and any other non-recurring charges. Where possible these charges will appear on the Customer’s next invoice but sometimes there may be a delay.
  1. All Charges are exclusive of VAT which is chargeable at the applicable rate.
  2. As part of its credit management procedures, Supplier may at any time:
     1. carry out a credit check of the Customer. The Customer agrees to provide Supplier with any information Supplier may reasonably require for this; and
     2. require the Customer to pay a deposit or provide a guarantee as security for payment of future invoices by the means requested by Supplier; and/or
     3. require the Customer to agree a payment plan determined by Supplier that in Supplier’s sole opinion will cover their estimate of the Customers monthly charges for utilising the Services.
  3. Payment is due fourteen (14) days from the date of the invoice unless otherwise stated on the Order Form and any credits raised by Supplier shall be applied directly to the Customer’s account.
  4. Unless agreed otherwise in an Order Form, the Customer must pay all charges by Direct Debit
  5. Payments made other than by Direct Debit will be collected by Supplier but Supplier may apply an additional five percent (5%) payment processing fee onto the invoice.
  6. Where Supplier has agreed that the Services can be included within a standard Supplier pricing package or scheme, the Customer agrees that while the Services is included within the pricing package or scheme the charges specified in the Service Catalogue may be amended by the terms of the pricing package or scheme. Upon termination of the pricing package or scheme, the charges will revert to those specified in the Service Catalogue.
  7. Supplier shall invoice the Customer for the Services as detailed on this Order Form once they are made available for the Customer use.  This may include a non-refundable deposit or advance/pre-payment if detailed/agreed on the Order Form.
  8. Irrespective of whether the Customer terminates this Contract early under clause 11, the Customer shall remain responsible for repaying all amounts due under the Contract, including, without limitation, those sums due under the Finance Arrangements.
  9. When applicable, Supplier shall be entitled to increase the Charges to accommodate the greater of increased Third Party and Supplier operational costs or in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period and such increase shall be applied on or after each anniversary of the Services Start Date.

**Disputed Invoices**

* 1. If the Customer disputes any charge on an invoice the Customer must notify Supplier in writing within fourteen (14) days of the date of the invoice stating the reason or reasons why it believes the invoice to be incorrect (provided that the Customer shall pay to Supplier any part of the amount of such invoice which is not in dispute, in accordance with clauses 8.12 and 8.13).
  2. Supplier shall attempt to resolve ay disputes promptly and in the meantime the Customer must not withhold any payment unless this has been agreed in writing with Supplier.
  3. Upon resolution of the dispute, the Customer shall pay any remaining amount that is properly due and owing under the invoice, and if the original invoice was shown to be correct, the Customer shall be subject to the additional charges in accordance with clause 8.23.
  4. Any dispute received by Supplier after the fourteen (14) day period has elapsed will be processed at Supplier’s sole discretion.

**Late Payment**

* 1. If the Customer defaults in paying any sum due under the Contract by the due date for payment, Supplier may charge the Customer
     1. a late payment charge of £80, to reflect the legal and administration costs associated with Supplier recovering the late payment; and/or

* + 1. daily interest on late payments at a per annum rate equal to four percent (4%) above the base lending rate of the Bank of England for the period beginning on the date on which payment is due and ending on the date on which payment is made (before and after judgment).
  1. If the Customer does not pay an invoice, Supplier may instruct a debt collection agency to collect payment (including any interest and/or late payment charges) on its behalf. If Supplier instructs an agency, the Customer shall be liable for the reasonable costs Supplier has to pay to the agency, who will add the sum to the Customer’s outstanding debt on Supplier’s behalf.
  2. If any sum owed by the Customer to Supplier under the Contract or any contract with Supplier is not paid by the due date, Supplier may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with Supplier.

* 1. Additionally, if any Charge(s) owed by the Customer to Supplier under the Contract or any contract with Supplier is not paid by the due date, Supplier may suspend the Services by giving twenty-four (24) hours’ notice in writing. Only when all outstanding payments have been paid to Supplier would the Services be recommenced. The Customer shall continue to pay the Charges during any period of suspension.

**Fraud Prevention**

* 1. Supplier may check the Customer’s details with a fraud prevention agency. If the Customer provides information that Supplier reasonably believes to be false or incorrect and Supplier suspects fraud, Supplier may record this information with a fraud prevention agency. Supplier and other organisations may use and search this information.
  2. If the Services require passwords and usernames to access the Services or control the Services, it is the responsibility of the Customer to manage this security. Supplier shall not be responsible for any security breaches in this regard nor shall it be liable for any costs that result from such a security breach.

1. **REPRESENTATIONS AND WARRANTIES**
   1. The Customer agrees that use of the Services is at the Customer’s sole risk.
   2. The Supplier warrants to the Customer that the Services will, during the term of this Contract, materially conform to any description of the Services as set out in the Service Schedule.
   3. The Customer’s sole and exclusive remedy, and the Supplier’s sole and exclusive liability, for a breach of the limited warranties set forth in this clause 9 is that, upon written notice to the Supplier by the Customer, the Supplier will use reasonable endeavours to remedy the Services to materially conform with the limited warranty in clause 9.2.
   4. Save as expressly set out in the Contract, neither Party gives any representation or warranty of any kind whether express, implied (either in fact of operation of Applicable Laws) or statutory, as to any matter whatsoever. The Supplier expressly disclaims all implied warranties of merchantability, fitness for purpose, quality, accuracy and title.
   5. The Supplier warrants against interference with the enjoyment of the Supplier service or against infringement, however, the Supplier does not warrant that the Services is error free or that the operation of will be secure or uninterrupted.
   6. The Customer will not have the right to make or pass on any representation or warranty on behalf of the Supplier to any Customer client or Third Party.
   7. The Customer warrants and represents that (except in relation to third party hardware, software or services procured by Supplier for or on behalf of the Customer in accordance with the Contract):
      1. it holds valid licences and consents from for all third party’s to make available and permit Supplier to use the Customer Equipment, including any goods, services or software which are sub-licensed by a third party to the Customer for use with the Customer Equipment, for the purposes of enabling Supplier (and any sub-contractors) to carry out the Services pursuant to the Contract and that such use shall not infringe any Third Party IPR;
      2. it has all the relevant and necessary end user licensing in place where it is required to access Supplier’s infrastructure and/or utilise any software;
      3. the Customer shall immediately notify Supplier if it becomes aware of any failure by the Customer to meet its obligations of this clause 9 and the Customer shall provide Supplier with all assistance reasonably requested to assist in taking all steps to mitigate, remedy or defend any failure to meet the obligations set out in this clause 9.7.
   8. Each party represents, warrants and undertakes that:
      1. it has full capacity and authority and all necessary consents to enter into and to perform this Contract and to grant the rights and licences referred to in this Contract and that this Contract is executed by its duly authorised representative and represents a binding commitment on it;
      2. without affecting its other obligations under this Contract, it shall comply with all applicable legislation in the performance of its obligations under this Contract;
      3. it shall implement due diligence procedures for its direct subcontractors, and suppliers to ensure that there is no slavery or human trafficking in its supply chains;
      4. as at the date of this Contract, it nor any of its officers, employees:
         1. has been convicted of any offence involving slavery and human trafficking; and
         2. to best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
   9. Supplier warrants and represents to the Customer that:
      1. the provision of the Services by or on behalf of Supplier does not and shall not infringe any IPR of any third party;
      2. Supplier has all rights and permissions necessary to assign:
      3. the Developed Materials (and any Third Party IPR therein) to the Customer in accordance with clause ‎‎15.2 and use of the Developed Materials (and any Third Party IPR therein) in accordance with the Contract shall not infringe any Third Party IPR; and
      4. the Supplier IPR to the Customer in accordance with clause ‎‎15.5 and use of the Supplier IPR in accordance with the Contract shall not infringe any Third Party IPR.
   10. In respect of the Services, the Customer agrees that its primary remedies in respect of any non-conformance with any warranty in this Contract are set out in this clause 9, and in respect of Purchased Equipment and Rented Equipment set out in clauses 3.9 – 3.13 and 4.13 – 4.14 respectively.
   11. The Customer must promptly notify the Supplier of any non-conformance to the above warranties in order to benefit from the remedies stated above and in any event within fourteen (14) days after delivery of any Services.
2. **CHANGE CONTROL PROCEEDURE**
   1. Supplier shall be entitled to change the Contract at any time to comply with Applicable Laws or the direction or instructions of any Authority or Third Party, or to reflect changes within the Supplier business that were not foreseen at the time the Contract was signed and will publish any change in line with clause 10.2.

* 1. Unless otherwise stated in the Contract, Supplier shall publish any changes to the Contract (including the Charges) on the Customer invoice or in accordance with clause 20.18 as follows:
     1. for changes that are to the Customer’s detriment (this includes any increases to the Charges or changes that require the Customer to make any changes to how the Services are used), at least fourteen (14) days before the change is to take effect: and
     2. for all other changes at least one (1) day before the change is to take effect.
  2. Any revised Conditions that are issued and agreed as variations or additions to the original Contract shall automatically apply to the original Contract.
  3. Either Party may request changes to any of the Services under the Contract (in each case, a “**Change Request**”). Any Change Request shall be made in writing and sent to the Customer representative or Supplier representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
  4. Where the Parties propose a Change Request Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services, and any other impact of the change on the terms of this Contract. The Customer shall notify Supplier whether it accepts or reasonably rejects the Change Request within five (5) Business Days of its receipt of the written estimate.
  5. A Change Request shall become a “**Change Order**” when the Change Order form has been signed by a duly authorised representative of both Parties to signify their approval to the change. Until such time the Parties shall continue to perform their respective obligations under the Contract without taking into account the Change Request. Once duly signed, Change Orders shall be deemed incorporated into Contract and Supplier shall commence performance of the Change Order accordingly.
  6. Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
  7. Unless otherwise agreed in writing, Supplier shall be entitled to charge the Customer at Supplier's then current rates for investigating, reporting on and, if appropriate, implementing a Change Request requested by the Customer.
  8. The Supplier shall use its reasonable endeavours to promptly notify the Customer of any changes in Applicable Law relevant to the provision, receipt or use of the Services (other than a change in Applicable Law which relates uniquely and specifically to the Customer in respect of which each Party shall promptly notify the other upon becoming aware of the same). Following the Supplier becoming aware of any change in Applicable Law, the Supplier shall notify the Customer of any changes to the Services (or any part thereof) that may be necessary to ensure that the provision of the Services and their receipt and use by the Customer continues to comply with Applicable Law (each a “**Mandatory Change”).** Each Mandatory Change shall be introduced by the Supplier and progressed by the Parties through the Change Control Procedure. The Customer shall pay the costs and expenses of a Mandatory Change (including the costs and expenses of implementing that Change and any ongoing costs and expenses in respect of that Change) to the extent the relevant change in Applicable Law relates uniquely and specifically to the Customer by the Supplier, to the extent to which clause 10 does not apply to the relevant change in Applicable Law the Supplier shall consult with the Customer on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact the Services. The Supplier shall not implement any change, without the Customer's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Services in accordance with the Contract. Any change which impacts any of the Services shall be agreed and documented in accordance with this clause 10. Without prejudice to the rest of this clause 10, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced pursuant to this clause 10.9.

1. **TERMINATION**
   1. Save in respect of any Rented Equipment, in the event the Customer cancels the Contract or the Services at any time prior to the Services Start Date, an Early Cancellation Charge may apply on the following basis:
      1. In the event the cancellation is received within seven (7) days from the Effective Date and before the Services Start Date there will be no Early Cancellation Charge payable by the Customer. However, if the Contract is subject to a Finance Arrangements this limit is extended to fourteen (14) days.
      2. In the event the cancellation is received after either seven (7) or fourteen (14) days as per clause 11.1.1 the Customer shall pay Supplier, as a reflection of the costs it incurred in setting up the Services:
         1. fifty percent (50%) of the total value of the Rented Equipment Monthly Rent; multiplied by
         2. the remaining period of the Minimum Contract Term; plus
         3. 33% of the Purchased Equipment Charges on this Order Form,

(Collectively the “**Early Cancellation Charge**”).

* 1. Once the Services Start Date has occurred, for all or part of the Services, the Contract or the Services may be terminated by either Party on not less than ninety (90) days written notice to the other Party, for whatever reason, however an Early Termination Charge may apply in accordance with clause 11.3.
  2. Subject to clause 11.4, if the Customer or Supplier terminates the Contract or the Services or any part of the Services during the Minimum Contract Term and/or Renewal Term, the Customer shall pay Supplier:
     1. all outstanding Charges, which shall include all unpaid invoices and any Charges for Services that have not been invoiced up to the date of the termination; plus
     2. a charge that will be calculated in accordance with clause 12.6 on the amount of Charges due under any Finance Arrangements; plus
     3. a sum equal to all the remaining Services Monthly Rent that the Customer would have paid had the Contract continued for the Term, less a discount of 10% of such remaining Services Monthly Rent.

(Collectively, the “**Early Termination Charge**”)

* 1. This Early Termination Charge will be invoiced in accordance with clause 8 and in respect of Rented Equipment included under a Finance Arrangements the Early Termination Charge applicable to those items shall be governed by clause 12.6. Without prejudice to clause 11.4, clause 11.3 will not apply if:
     1. the Customer terminates the Contract or Services or any part of the Services during the during the Minimum Contract Term and/or Renewal Term because Supplier is in material breach of this Contract and Supplier acknowledges that such material breach cannot be rectified; or
     2. the Customer gives notice to terminate the Contract within one (1) month of Supplier notifying the Customer of a major (over 30%) increase to the Charges or major (as defined by Supplier) changes to the Conditions or Services in either case to the Customer's significant detriment; or
     3. Supplier terminates the Contract or the Services during the during the Minimum Contract Term and/or Renewal Term for convenience; or
     4. the Contract is terminated in accordance with clause 20.3.
  2. The Customer may also terminate this Contract by way of notice in writing if:
     1. Supplier materially breaches the Contract and, if the breach is capable of remedy, fails to put right the breach within thirty (30) days of being asked by the Customer to do so: or
     2. insolvency proceedings are brought against Supplier or Supplier makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of Supplier’s assets or Supplier goes into liquidation or a corresponding event under any jurisdiction.
  3. For the avoidance of doubt, in the event that the Contract is terminated for any reason and the Contract included Finance Arrangements then such termination shall be without prejudice to the operation of clause 11.3 and the Customer retains its liability to pay the amounts referred to in clause 12.6 in respect of all such Finance Arrangements.
  4. Supplier may suspend the Services or terminate the Contract, or both, at any time without notice and, if the Contract is terminated, apply the Early Termination Charge to include payment of the amounts referred to in clause 11.3, if:
     1. the Customer breaches the Contract or any other contract that the Customer has with Supplier and, if the breach is capable of remedy, fails to put right the breach within a reasonable time (not exceeding thirty (30) days) of being asked by Supplier to do so. In this clause breach includes the Customer planning to or commencing to move the all or part of the Services to an alternative supplier without providing Supplier any notice of the change; or
     2. Supplier reasonably believes that the Services are being used in a way forbidden by clauses 6.1 to 6.6 or as detailed in clause 6.8.2. This applies even if the Customer is unaware that the Services are being used in such a way; or
     3. the Customer is declared bankrupt, files for bankruptcy protection, make an assignment for the benefit of creditors or is in receivership; or
     4. the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
     5. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
     6. the Customer ceases, or threatens to cease, to carry on business; or gives notice of their intention to migrate all or part of the Services, or
     7. Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

1. **TERMINATION CONSEQUENCES**
   1. Termination of this Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
   2. On termination of this Contract for any reason:
      1. Supplier shall immediately cease provision of the Services;
      2. all Charges payable by the Customer to Supplier under this Contract shall become due immediately despite any other provision of the Contract. Additionally, in the event the Charges identifies the Services are to be provided for a minimum term and the Customer Order Form confirms this and termination takes place before the minimum term has expired then the remaining fees applicable to the end of the applicable minimum term shall be payable by the Customer; and
      3. the Customer shall within thirty (30) days send to the Supplier or otherwise dispose of in accordance with the directions of the Supplier copies of all Documentation and all Confidential Information relating to the Services then in the possession of the Customer;
      4. all the Customer data, including but not limited to databases, contacts, calendars, email, content, recordings etc, will be irrevocably deleted by the Supplier within thirty (30) days of termination, unless such records are legally required to be retained by the Customer, in which case the Customer shall notify the Supplier and the Supplier shall secure all necessary data prior to termination. The Supplier will not be responsible for any loss of data or any damages resulting from the deletion of this data following the termination of the Services;
      5. clauses that are necessary for the enforcement or interpretation of this Contract shall survive, which shall include, but not be limited to, clauses relating to termination, payments, warranty, confidentiality, solicitation, retention of title and protection of Intellectual Property Rights;
      6. in the event that any money is owed by Supplier to the Customer, Supplier shall refund any money after first deducting any money due to Supplier under this Contract or any other contract that Supplier has with the Customer;
      7. subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract;
   3. Where individual Order Forms are terminated in isolation to the main Contract, clauses 12.2.1, 12.2.2, 12.2.3, 12.2.4, 12.2.5 and12.2.6 shall apply;
   4. Termination or expiry of this Contract shall be without prejudice to any provision which expressly or by implication is intended to survive termination or expiry
   5. In addition to the Charges payable under clause 12.2.2, Supplier reserves the right to invoice the Customer for any additional costs and expenses incurred as a consequence of termination of this Contract, including, without limitation:
      1. recovering Rented Equipment from the Site, delivery point or any premises at which the Rented Equipment may be located; and/or
      2. the porting or migrating of telephone numbers and all engineering duties associated with removing or transferring services or stored Customer data,

where such services are provided by Supplier this shall be charged at Supplier’s then current rate card (available on request), or if provided by a Third Party, any related charges shall be invoiced by Supplier to the Customer in accordance with Third Party’s charges plus 20% and such additional costs and expenses shall be payable by the Customer within seven (7) days from receipt of the invoice.

* 1. On any early termination of the hiring of any Rented Equipment for any reason whatsoever the Customer shall in respect of each such Rented Equipment, and in place of any other payment requirements of this Contract:
     1. immediately make arrangements with Supplier and arrange the return all Rented Equipment to Supplier in accordance with clauses 4.17– 4.20 inclusive;
     2. pay to Supplier:
        1. a sum equal to all arrears of the Finance Arrangements, Rented Equipment Monthly Rent and other payments and interest as set out in this Contact, plus
        2. a sum equal to all the Rented Equipment Monthly Rent that the Customer would have paid had the Contract continued for the Minimum Contract Term and/or Renewal Term, less a discount of 2% per annum of such remaining Rented Equipment Monthly Rent;
  2. Upon termination of this Contract for any reason Supplier will provide to the Customer and/or to any new supplier selected by the Customer (the “**Successor Service Provider**”) such assistance as reasonably requested by the Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to the Customer or to Successor Service Provider (such assistance shall be known as the “**Termination Assistance Services**”) during any period of notice of termination (the “**Termination Assistance Period**”). Any services required by the Customer for the transition of Services during the Termination Assistance Period shall be provided by Supplier in accordance with its then current rate card (available on request) for such period of time as shall be mutually agreed. Such Termination Assistance Services may include:
     1. developing a plan for the orderly transition of the terminated Services from Supplier to the Customer or the Successor Service Provider; and
     2. such other activities upon which the Parties may agree including any non-proprietary documents to enable a Successor Service Provider to continue to provide services.

1. **INDEMNITIES**

The Supplier indemnifies the Customer in connection with any and all losses suffered by the Customer arising out of or as a result ofany claim or action that the Customer’s use of any of the Services infringes the IPR of a third party.

* 1. The Customer shall at all times keep the Supplier indemnified against any claim for loss, damage, costs, expenses, injury or death to the Supplier and/or third parties howsoever arising (directly or indirectly) out of or in connection with the negligence, breach of duty of care or any other act or omission of the Customer in relation to the use of the Services hereunder.
  2. Any indemnity claim under the Contract shall be subject to the following:
     1. in relation to any third party claims only, the indemnified Party shall notify the indemnifying Party as soon as reasonably practicable after becoming aware of any circumstances that are likely to give rise to an indemnity claim and shall keep the indemnifying Party informed as to the conduct of such claim;
     2. the indemnified Party shall take all reasonable steps to mitigate its losses arising in relation to the indemnity claim; and
     3. in relation to any third party claims only, the indemnified Party shall not settle any indemnity claim without the prior written consent of the indemnifying Party (such consent not to be unreasonably withheld or delayed).
  3. The indemnifying Party shall not be liable under the indemnity to the extent that the claim results from the default or negligence of the indemnified Party.

1. **LIMITATION OF LIABILITY** 
   1. Subject to clauses 14.2, and 14.3, the maximum aggregate liability of either Party to the other in respect of all losses, claims, damages, costs, charges, expenses and liabilities (including reasonable legal fees and disbursements) under or in connection with this Contract for the entire Term whether in contract, tort (including negligence), misrepresentation, for breach of duty or otherwise, shall be limited to the lesser of (i) one hundred and twenty five percent per cent (125%) of the Charges paid to the Supplier under the Contract in the twelve (12) months preceding a claim by either Party or (ii) £500,000 (five hundred thousand) UK pounds. For the avoidance of doubt, this cap does not include any Early Cancellation or Termination Charges payable by the Customer and/or any amounts under clause 11.3 or 12.6.
   2. Nothing in this Contract excludes or restricts the liability of either Party for:
      1. death or personal injury caused by the negligence of that Party, its directors, officers, employees or agents;
      2. for fraud and/or fraudulent misrepresentation; or
      3. any other liability which, by law, cannot be excluded or limited.
   3. Subject to clause ‎14.2, in no event shall either Party be liable to the other Party, whether arising in contract, tort, (including negligence), misrepresentation or for breach of duty (including strict liability) for:
      1. loss of business;
      2. loss of goodwill or similar losses;
      3. loss of profits, anticipated savings, revenue or pure economic loss; or
      4. any special, indirect, consequential losses.
   4. The provisions of this clause ‎14 set out the entire financial liability of either Party (including, without limitation, any liability for the act or omissions or its employees, agents and subcontractors) to the other Party in respect of:
      1. any breach of contract, howsoever arising;
      2. any use made by the Customer of the Services or any part of them;
      3. any representation, misrepresentation, statement or tortious act or omission (including, without limitation, negligence) arising under or in connection with the Contract.
   5. Subject to clause 14.2, Supplier shall not in any circumstances be liable for:
      1. any claims made or alleged by a third party against the Customer as a result of the Customer’s failure to comply with its obligations under this Contract;
      2. any failure, non-provision or delay in the provision of the Services which:
         1. can be reasonably attributed to the acts or omissions of the Customer, its employees or agents or the interoperability of the Customer’s or any Customer products or applications with the Services; or
         2. occurs during any period of maintenance which is notified in accordance with the procedures as set out in the relevant Service Schedule; or
         3. any unavailability of the Services that is due in whole or in part to the failure of any Customer Equipment, or any Third Party services, network or software.
   6. The Customer remains fully liable for all costs for failure to meet the requirements of clause 6.1 to 6.7, and any claims made or alleged by a third party against the Customer that result from fraudulent use of the Services.
   7. Supplier has given commitments as to compliance of the Purchased Equipment with relevant specifications in clause 3.9. In view of these commitments, the terms implied by section 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Contract.
   8. If any service credits are paid or credited to the Customer, such service credits shall be paid in accordance with the SLA, such shall be taken into account for the purposes of calculating the limit of Supplier’s liability and any service credits paid or credited to the Customer shall not entitle the Customer to recover damages or otherwise obtain restitution more than once in respect of the subject matter of any service credits paid or credited.
   9. For the purposes of this clause 14 either Party includes its employees, sub-contractors, Affiliates and suppliers. Either party acknowledges that the other Party’s employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause 14 in terms of the Contracts (Rights of Third Parties) Act 1999.
   10. The Parties agree that any sum that is paid shall be taken into account in any claim, demand, action or proceedings brought against the other Party in respect of the breach of the Contract or other circumstances which gave rise to its payment so as to avoid any double-recovery of the sum paid.
   11. Neither Party may benefit from the limitations and exclusions set out in this clause 14 in respect of any liability arising from its deliberate default.
   12. Both Parties acknowledge and agree that the limitations and exclusions of liability set out in this clause 14 are reasonable and have been agreed taking into account the commercial value of this Contract to each party and the commercial standing of each Party.
   13. This clause 14 shall be without prejudice to the Customer’s obligation to pay the Charges.
2. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**Intellectual Property**

**Pre-Existing IPR**

* 1. Save as otherwise expressly set out in the Contract, neither Party (nor any sub-contractor) shall receive any right, title or interest in respect of the IPR owned or controlled by the other Party as at the date of the Contract (”**Pre-Existing IPR**”).

**Developed Materials**

* 1. Subject to payment of Charges and subject to clause ‎15.1 and Supplier IPR, the Customer shall own and retain all rights, title and interest in and to the Developed Materials as are identified as Developed Materials under a schedule (or Service Schedule) agreed between the Parties in writing.
  2. Supplier grants to the Customer, or shall procure, an irrevocable, non-exclusive, worldwide, licence for the duration of the Term to use Supplier’s IPR and the Pre-Existing IPR for its own internal purposes to the extent that the Supplier’s IPR and/or such Pre-Existing IPR subsists in, or is required in order to make such use of the Developed Materials. For the avoidance of doubt, the Customer shall have no right to sub-licence Supplier’s IPR and the Pre-Existing IPR to any other party without the prior written approval of Supplier.
  3. Supplier hereby waives any and all moral rights in and to the Developed Materials.
  4. To the extent that any IPR in the Developed Materials does not automatically vest in the Customer, Supplier hereby assigns (and shall procure that its employees, agents and sub-contractors assign), by way of present and future assignment, all right, title and interest that Supplier has or may acquire in the Developed Materials, at the Customer’s cost and shall procure that its Sub-Contractors do the same. Supplier shall (and shall use it’s reasonable endeavours to procure that its sub-contractors shall) execute all documents and take all actions necessary to perfect or assign its rights in the Developed Materials, at the Customer’s cost.
  5. Supplier will not use any equipment, supplies, facilities, computer code, work product, inventions or materials of any other third party (“**Third Party Materials**”) in any Developed Materials unless:
     1. Supplier has the full right and authority to do so without violating any rights of any third party;
     2. Supplier has obtained all necessary rights to enable it to perform its obligations under the Contract and grant the rights herein and to permit the Customer to use the Third Party Materials in accordance with the Contract at no additional cost to the Customer; and
     3. such Third Party Materials are specifically identified to the Customer in writing in advance of any use and the Customer has agreed in writing to such use.
  6. Supplier shall procure any Third Party Materials required by the Customer for the provision of the Services. Supplier expressly excludes any warranty and liability to the Customer that the Third Party Materials supplied or licensed under this Contract will operate substantially in accordance with, and perform, the material functions and features as set out in the its marketing, sales or other associated documentations.
  7. Supplier hereby grants and shall procure the grant of a non-exclusive, worldwide, transferable licence to Customer to use (with the right to sub-license) the Third Party Materials to the extent that they are incorporated into the Developed Materials and solely in connection with the Customer’s use of the Developed Materials.

**Confidentiality**

* 1. Each Party (the “**Receiving Party**”) undertakes that, except as authorised in writing by the other Party, it shall, during the continuance of this Contract and for two (2) years after its termination or expiry:
     1. not use the Confidential Information of the other Party (the “**Disclosing Party**”) for any purpose other than the performance of its obligations under the Contract;
     2. not, without prior written consent of the Disclosing Party, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information of the Disclosing Party to any other person other than as provided in this clause ‎15.9;
     3. ensure that the Confidential Information of the Disclosing Party is protected with at least the same security measures and degree of care that would apply to its own Confidential Information;
     4. procure that any of its directors, officers, employees or professional advisers (and, in the case of Supplier, any subcontractor, or any of the directors, officers, employees and professional advisers of such subcontractor) to whom Confidential Information is disclosed complies with, and is aware of, the restrictions set out in this clause ‎15.9 as if such person were a Party to the Contract.
  2. Notwithstanding clause 15.9, either Party may disclose another’s Confidential Information:
     1. to its directors, officers and employees and, in the case of Supplier, to the directors, officers and employees of any subcontractor including Affiliates;
     2. to the extent required by Applicable Laws or by any Authority; and
     3. to its professional advisers and auditors.
  3. Neither Party shall without prior written consent of the other, make any announcements concerning the Contract or its subject matter to any third party, save that Supplier may:
     1. name the Customer as a client for marketing purposes; and
     2. subject to the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) issue a press release on the entering into of the Contract announcing the entering into of this Contract (but not the commercial terms of the same).
  4. Notwithstanding the expiry or early termination of the Contract, the provisions of clause ‎15.9 shall continue to apply to each Party for a period of three (3) years after the termination of this Contract for any reason.
  5. In the event of the expiry or termination of the Contract, within thirty (30) days of such expiry or termination each Party shall upon written request return to the other Party (or, at the other Party’s election, destroy) all Confidential Information, or where Confidential Information cannot be so returned or destroyed, shall use reasonable endeavours to ensure, so far as is reasonably practicable, that all Confidential Information in electronic, digital or machine readable form ceases to be readily accessible from any computer or other device under the control of that Party.
  6. Information Supplier holds about the Customer may be used for fraud prevention and credit check purposes and this may include Supplier sharing such information with third-party companies including other communication companies and third-party funders.
  7. Where the Freedom of Information Act 2000 applies to the Customer and the Customer receives a request under the Act that includes any information held by the Customer that was provided by Supplier in connection with the Contract the Customer shall:
     1. notify Supplier immediately of the request; and
     2. give Supplier at least five (5) Business Days to make representations.

1. **LICENCES**
   1. Supplier shall procure any Third Party Software required by the Customer for the provision of the Services. Except as expressly set out in the relevant Third Party Conditions, Supplier expressly excludes any warranty and liability to the Customer that the Third Party Software supplied or licensed under this Contract will operate substantially in accordance with, and perform, the material functions and features as set out in the its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to Supplier throughout this Contract and until the end of the respective licence terms for such Third Party Software (the “**Licence Fees**”).
   2. In consideration of the Licence Fees paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive, revocable, worldwide, non-transferable licence for the Term to use the Third Party Software.
   3. In relation to scope of use, use of the Third Party Software:
      1. shall be restricted to use of the Third Party Software in object code form for the purpose of processing the Customer’s data for the normal business purposes of the Customer (which shall not include allowing the use of the Third Party Software by, or for the benefit of, any person other than an employee of the Customer); and
      2. means loading the Third Party Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Third Party Software is licensed under this licence for use on each computer to which the Third Party Software is distributed.
   4. The Customer may not use the Third Party Software other than as specified in clause 16.3 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
   5. Except as expressly stated in this clause 16, the Customer shall not (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Third Party Software in whole or in part except to the extent that any reduction of the Third Party Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Third Party Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
   6. The Customer shall not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 16.5 to create any software whose expression is substantially similar to that of the Third Party Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
   7. The Customer acknowledges that it is responsible for ensuring that the Customer Equipment, and operating software for such Customer Equipment is compatible with the Third Party Software and Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the Parties.
   8. Except as expressly set forth in the relevant Third Party Conditions and subject to this Contract and to the fullest extent permitted by law, the Third Party Software is provided on an ‘as is’ basis, without warranty of any kind and Supplier expressly disclaims any and all warranties, whether express or implied, including (but not limited to) warranties of merchantability, title, fitness for a particular purpose and non-infringement. In particular, but without limitation, Supplier does not guarantee that the Third Party Software will:
      1. be error free;
      2. function without interruption; or
      3. be of merchantable quality or fit for purpose.
   9. The Customer shall indemnify Supplier against any losses incurred by Supplier as a result of the Customer failing to comply with the relevant Third Party Conditions.
2. **THIRD PARTY CLAIMS**
   1. The Supplier shall defend, at the Supplier's expense, any claim (the “**Claim**”) brought against the Customer alleging that use of any Services under this Contract infringes any Third Party IPR.
   2. Subject to clause 17.1, the Supplier shall pay all costs and damages awarded or agreed to in settlement of a Claim PROVIDED THAT the Customer furnishes the Supplier with prompt written notice of the Claim and provides the Supplier with reasonable assistance and sole authority to defend or settle the Claim.
   3. If in the Supplier's reasonable opinion, the Services become the subject of a Claim, then the Supplier shall either obtain for the Customer the right to continue using the Services, replace it, or, with the prior written consent of the Customer, modify it so it becomes non-infringing. If such remedies are not reasonably available (in the Supplier's sole opinion), then the Supplier shall grant the Customer a credit for any Services supplied, as normally depreciated, and accept its return.
   4. The Supplier shall have no liability for any Claim resulting from the combination of the Services with other services which were neither supplied nor combined with the Services by the Supplier, this includes any claims that have arisen from the modification or alteration to the Services by any party that is not the Supplier.
3. **INSURANCE**
   1. Throughout the Term, each party shall effect and maintain full and comprehensive insurance in respect of all typically insurable third party risks which are associated with or arise in connection with the performance of its obligations under the Contract to the following levels including professional indemnity risks (£5 million GB Pounds), employer’s liability (£10 million GB Pounds) and public and products liability (£5 million GB Pounds).
   2. On written request from a Party, the other Party shall produce evidence to requesting Party that the insurance cover referred to in clause 18.1 is in place.
   3. Each Party shall not do or omit to do anything which would or might invalidate or in any way adversely affect any of the policies of insurance which it is required to effect and maintain pursuant to this clause 18.

1. **DATA PROTECTION**
   1. For the purposes of this clause 19, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the Applicable Data Protection Laws.

* 1. Both Parties shall comply with all applicable requirements of the Applicable Data Protection Laws. This clause 19 is in addition to, and does not relieve, remove or replace, a Party’s obligations or rights under Applicable Data Protection Laws.
  2. The Parties have determined that, for the purposes of the Applicable Data Protection Laws, the Supplier shall process the personal data set out in Appendix 1, as a processor on behalf of the Customer and the Customer shall act as the controller.
  3. Without prejudice to the generality of clause 19.2, the Customer shall ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Supplier for the duration and purposes of this Contract.
  4. In relation to Customer Personal Data, Appendix 1 sets out the scope, nature and purpose of the processing by the Supplier, the duration of the processing, and the types of personal data and categories of data subject.
  5. Without prejudice to the generality of clause 19.2, Supplier shall, in relation to the Customer Personal Data:
     1. process the Customer Personal Data only on the documented instructions of the Customer, which shall be to process that Customer Personal Data for the purposes set out in Appendix 1;
     2. implement appropriate technical and organisational measures to protect the Customer Personal Data against unauthorised or unlawful processing, accidental loss, destruction of, or damage, which the Customer has reviewed and confirms are appropriate to the potential 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.
     3. ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
     4. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer’s cost and written request, in responding to any request from a data subject and in ensuring the Customer’s compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators,
     5. notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data,

* + 1. at the written direction of the Customer, delete or return all Customer Personal Data and copies thereof to the Customer on termination of the Contract unless Supplier is required by Applicable Laws to continue to process that Customer Personal Data. For the purposes of this clause 19.6.6, Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
    2. maintain records to demonstrate its compliance with this clause 19 and allow for reasonable audits by the Customer and/or any party designated by the Customer or the Customer’s designated auditor, for this purpose, on reasonable written notice.
  1. The Customer hereby provides its prior, general authorisation for the Supplier to:
     1. appoint processors to process the Customer Personal Data, provided that Supplier:
        1. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Supplier in this clause 19;
        2. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
        3. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Supplier’s reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Laws, the Customer shall indemnify Supplier for any losses, damages, costs (including legal fees) and expenses suffered by Supplier in accommodating the objection.
     2. transfer Customer Personal Data outside of the UK as required for the purposes for which the Customer Personal Data is processed, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

1. **GENERAL TERMS**

**Force Majeure**

* 1. If the Customer or Supplier is unable to perform, or is delayed in performing, any obligation under the Contract because of something beyond its reasonable control including act of God, lightning, flood, exceptionally severe weather, future epidemics and/or pandemics, fire, explosion, war, civil disorder, industrial disputes, Viruses and malware, or acts or omissions of local or central government or other competent authorities, or beyond the reasonable control of its suppliers, Third Party’s or other third parties (“**Force Majeure**”), it will have no liability to the other for that failure or delay in performing. However, the Customer remains liable at all times for all Charges due, including, without limitation, those that form part of any Finance Arrangements.
  2. Supplier shall not be liable for failure to or delay in supplying the Services if:
     1. another supplier delays or refuses the supply of an electronic communications service to Supplier and no alternative service is available at reasonable cost; or
     2. legal or regulatory restrictions are imposed that prevent Supplier from supplying the Services.
  3. If any of the events detailed in clause 20.1 continue for more than three (3) months’ the Customer or Supplier may terminate the Contract in whole or part by written notice to the other.

**Escalation and Dispute Resolution**

* 1. Supplier shall try to work through any dispute that the Customer may have with Supplier in accordance with the details set out in Supplier’s relevant Service Level Agreement located on their website or available on request. If this does not resolve the dispute, then clause 20.5 applies.
  2. If a dispute arises out of or in connection with this Contract for the performance, validity or enforceability of it (“**Dispute**”) then the Parties shall follow the procedure set out in this clause 20.5:
     1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, senior managers of the Parties shall meet and attempt in good faith to resolve the Dispute;
     2. if the senior managers of the Parties are for any reason unable to resolve the Dispute within fourteen (14) days of service of the Dispute Notice, the Dispute shall be referred to directors of the Parties who shall meet and attempt in good faith to resolve it; and
     3. if the directors of the Parties are for any reason unable to resolve the Dispute within twenty eight (28) days of it being referred to them then the Parties shall have no further obligation to follow this dispute resolution procedure.
  3. Notwithstanding anything in this Contract, either Party may initiate any legal action (including issuing proceedings) at any time without first complying with the procedure set out in clause 20.5.

**Transfer of Rights and Obligations**

* 1. Supplier may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under this Contract.
  2. This Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under this Contract.
  3. Supplier, its Supplier Group and assignees, Microsoft (for the purposes of the Customer Agreement only) and any applicable third party funder (solely in respect of any Finance Arrangements) may enforce all or part of the terms of this Contract subject to and in accordance with this clause 20.9, this Contract and the Contracts (Rights of Third Parties) Act 1999 (“**Act**”).
  4. A person who is not the Customer (including an employee, the officer, agent, representative or subcontractor of the Customer) has no right under the Act to enforce any term of the Contract. This does not affect any right or remedy that exists or is available apart from that Act.

**Severability**

* 1. If any term of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction, it will be severed and the remaining terms will continue in full force as if the Contract had been made without the invalid, illegal or unenforceable terms.

**Agency, Partnership**

* 1. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

**Survival**

* 1. Any provisions of this Contract which are expressed to and/or intended to survive any termination or expiry of this Contract (howsoever caused) shall survive any such termination and/or expiry of this Contract (howsoever caused).

**Entire Agreement**

* 1. The Contract contains the entire agreement between the Customer and Supplier and replaces all previous written or oral agreements relating to its content.
  2. The Customer and Supplier agree that:
     1. they have not been induced to enter into the Contract by, nor have they relied on, any statement, representation, warranty or other assurance not expressly incorporated; and
     2. in connection with the Contract their only rights and remedies in relation to any statement, representation, warranty or other assurance are for breach of the Contract and that all other rights and remedies are excluded.
  3. The terms of clauses 20.14 and 20.15 will not affect the rights or remedies of the Customer and Supplier for any fraudulent misrepresentation.

**Waiver**

* 1. A failure or delay by the Customer or Supplier to exercise any right or act upon a breach under the Contract will not be a waiver of that right or breach. If the Customer or Supplier waives a right or breach of the Contract, that waiver is limited to the particular right or breach.

**Notices**

* 1. Notices given under the Contract must be in writing and delivered to the following addresses unless otherwise stated in the Contract:
     1. to Supplier at the address shown on the invoice or any address, including email address, which Supplier provides to the Customer for this purpose; or
     2. to the Customer at any one or more of the following: the address to which the Customer asks Supplier to send invoices or the address of the Site or the Customer’s primary email address or if the Customer is a limited company, its registered office.
  2. This clause does not apply to notices given under clause 10.2.
  3. The Customer must inform Supplier immediately if there is any change to any of the contact information the Customer provided to Supplier.

**Law and Jurisdiction**

* 1. This Contract and any dispute or claim (including any 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 laws of England and Wales.
  2. 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) between the Parties relating to these Conditions or to the Contract.

**Customer’s Instructions**

* 1. Supplier may take instructions from any person whom it thinks, with good reason, is authorised by and/or acting with the Customer’s permission.

**APPENDIX 1 – PARTICULARS OF PROCESSING**

|  |  |
| --- | --- |
| **Data subjects:** | Customer personnel  Customer clients  Customer third parties  Business contacts in general |
| **Types of personal data:** | Name  Job Title  Email address  Phone number  Business / home address  IP addresses  Device identifiers  Profile photos  Any other personal data provided by the Customer to Supplier |
| **Special categories of personal data:** | None |
| **Purpose of processing:** | In the case of data subjects other than staff: for the purpose of providing Services as set out in this Contract and support to the Customer’s business.  In the case of staff: for the purpose of providing Services and support for the Customer’s business as utilised by its users. |
| **Nature of processing:** | As set out in the Contract |
| **Additional instructions:** | None |