



Terms and Conditions

1. Content of the Agreement

1.1 This Agreement for the provision of the Service(s) consists of:

- (a) these Conditions;
 - (b) the Order;
 - (c) the Pricing Schedule*; and
 - (d) the Service Schedule including any SLA (where applicable)
- (together this "Agreement")

*Pricing Schedule may also be set within the Order.

1.2 Defined terms when used in these Conditions will have the meaning set out in the Glossary.

2. Operational Start Date for the provision of the Service

2.1 This Agreement will commence on the date that:

- (a) the Order is signed by both parties; or
- (b) if the Customer has ordered the Service over the telephone or at our retail outlet or via the internet the date upon which the Supplier provides the service;

and will continue during the Minimum Service Period and thereafter until terminated by the Customer or the Supplier in accordance with this Agreement.

2.2 The Service will commence on the Operational Start Date and if the Service consists of the supply of more than one separate component, then each component will start on the Operational Start Date specified for that component in the Order.

2.3 The Operational Start Date (and any other dates) given in this Agreement regarding the Installation Service, or any Supplier Equipment are estimates and are provided for planning purposes only. The Supplier shall have no liability to the Customer if it fails to meet the Operational Start Date or any other date(s) as time is not of the essence.

3. Site Preparation, Access and Installation Services

3.1 The Supplier shall provide the Service subject to:

- (a) a satisfactory Survey;
- (b) any required access permissions to the Site being obtained pursuant to clause 9 below; and
- (c) the Customer's satisfactory credit status in accordance with clause 11.10.

The Supplier may, without liability to the Customer, terminate a Service if in its reasonable opinion any of the conditions set out in this clause 3.1 are not satisfied.

3.2 The Supplier shall conduct a Survey of the relevant Site and subject to the results may amend the Operational Service Date by notice in writing.

3.3 The Supplier will use its reasonable endeavours to perform and complete the Installation Services, however, the Customer acknowledges that for technical or operational reasons installation may not be possible. In such circumstance the Supplier may terminate (without liability) this Agreement by notice in writing to the Customer.

3.4 The Customer acknowledges that any Installation Charges are subject to Survey. If the results of the Survey reveal that the Supplier will incur substantial additional costs in providing the Service the Supplier shall be entitled to increase the Installation Charges by written notice to the Customer as soon as is reasonably practicable.

3.5 Where the Supplier notifies the Customer of an increase in the Installation Charges in accordance with clause 3.4 the Customer shall have the right to terminate this Agreement by notice in writing within seven (7) days of receipt of such notice. For the avoidance of doubt Early Termination Charges shall not be payable upon termination pursuant to clause 3.5.

3.6 The Customer shall:

- (a) be responsible for preparing the Site (in advance of the Operational Service Date) according to any instructions the Supplier may provide;
- (b) provide appropriate space, power, ducting and environment to install and maintain the Supplier Equipment;
- (c) provide the Supplier with reasonable access to the Site to install or connect any Supplier Equipment;
- (d) ensure that all necessary permissions to locate the Supplier Equipment on the Site have been obtained pursuant to clause 9.

3.7 If the Customer fails to take delivery or allow for the installation of the Supplier Equipment on any agreed delivery or installation date the Supplier may arrange for its storage at the Customer's risk. The Customer shall be liable for any reasonable costs of storing the Supplier Equipment.

3.8 The Customer shall provide a secure electricity supply and where applicable a UPS, at the Site for the Installation Services and the operation and maintenance of the Supplier Equipment. The Supplier shall not be liable for any faults arising in the Service or the Supplier Equipment caused as a result of failures in power supply.

3.9 The Supplier agrees to comply with any safety and security requirements notified to it in respect of the Site.

3.10 The Customer is responsible for making good the Site after any work has been carried out in accordance with these Conditions.

4. Supplier Equipment

4.1 The Supplier Equipment shall remain the Supplier's property at all times. Risk in and liability for the Supplier Equipment shall pass to the Customer on delivery of each item of the Supplier Equipment. The Customer shall be responsible for insuring the Supplier Equipment at the Site in respect of all relevant risks.

4.2 The Supplier may modify, substitute, renew or add to the Supplier Equipment from time to time at its sole discretion provided that this does not adversely affect the Service.

4.3 The Customer is responsible for the safe keeping and proper use of the Supplier Equipment at the Site. Subject to normal wear and tear, or where such loss or damage is solely attributable to the Supplier's negligent act or omission or that of our employees, subcontractors or agents, the Customer shall indemnify the Supplier for any damage or loss to the Supplier Equipment located on the Site.

4.4 The Customer will:

(a) Not try or allow anyone else to try to disassemble, deconstruct or otherwise interfere, tamper or remove any Supplier Equipment located at the Site;

(b) not add to or modify the Supplier Equipment;

(c) house, keep and use the Supplier Equipment in accordance with such written instructions as the Supplier may notify to the Customer from time to time;

(d) not cause the Supplier Equipment to be repaired, serviced or otherwise attended to except by authorised representatives of the Supplier; and

(e) not do anything likely to cause damage to the Supplier Equipment or detract from or impair its performance.

4.5 The Customer shall immediately notify the Supplier of any loss or damage to the Supplier Equipment. The Supplier shall have no liability for any loss or damage incurred as a result of the Customer's breach of this clause 4.

4.6 Whilst this Agreement is in force and after it has been ended, the Customer will allow the Supplier, its sub contractors or agents reasonable access to the Site to repair, or replace or if necessary remove any Supplier Equipment.

5. Customer Equipment

5.1 All Customer Equipment will be:

- (a) programmed, equipped, technically compatible and connected for use with the Supplier Equipment and the Supplier Network in accordance with the Supplier's reasonable instructions;
- (b) connected to the Supplier Network using connection points approved by the Supplier and will be operated in accordance with any relevant laws, standards, codes of practices or other instructions. The Customer will be responsible for connecting the Customer Equipment to the Supplier Network termination point;
- (c) properly protected against any viruses or other malware which may cause harm or damage or a security breach affecting the Supplier Network. The Customer shall be responsible for the security of access to the Customer's computer systems, the integrity of the information stored thereon and security from corruption, change and abuse of such systems and information by others; and
- (d) in good working order and be compliant with all applicable standards, approvals and relevant Law.

5.2 The Supplier may require the Customer to disconnect any Customer Equipment if in its reasonable opinion the Customer Equipment:

- (a) does not comply with the conditions in clause 5.1;
- (b) may cause injury or material damage to property; or
- (c) may impair the quality of the Service provided.

5.3 The Supplier shall have no liability:

- (a) for any loss or damage arising from use of the Customer Equipment;
- (b) for any incompatibility between the Customer Equipment and the Supplier Equipment, the Service, the Supplier Network or any third party communications network; or
- (c) for any failure of the Customer Equipment.

6. Acceptance

6.1 Following the Installation Services the Supplier shall conduct the Acceptance Test. If the Service fails the Acceptance Test the Supplier shall undertake any necessary remedial work and repeat the Acceptance Test.

6.2 If requested by the Customer the Supplier shall conduct the Acceptance Test in the presence of the Customer provided that a representative of the Customer is available at such reasonable times as the Supplier may specify.

6.3 The Customer may be requested to sign a confirmation to acknowledge that the Acceptance Test has been successfully passed. If the Customer does not sign the confirmation it shall be deemed to have done so within seven (7) days of such request.

7. Security

7.1 Where the use of the Service requires the establishment of User Security Information, the Customer will ensure that such information is kept secure and unauthorised users do not obtain access to such information.

7.2 In the event that the Customer considers that its User Security Information has been compromised, it will inform Supplier as a matter of urgency. If agreed, Supplier may authorise the Customer to alter the User Security Information or ensure that all such information is changed.

7.3 If Supplier believes that any compromise of the User Security Information may endanger the security of the Service and/or allow misuse of the Service, Supplier may:

- (a) alter or suspend the User Security Information;
- (b) order the Customer to alter the User Security Information; or
- (c) suspend the Service.

7.4 The Customer acknowledges that any access to the Internet via the Service is at the Customer's sole risk. The Customer shall be responsible for the security of its use of the Services, including, but not limited to, protecting all User Security Information, backing up all data, employing appropriate security devices, including virus checking software and having disaster recovery processes in place.

7.5 The Customer shall be responsible for the use of the Service (whether authorised or not) including without limitation for any Charges incurred and any breach of this Agreement.

8. Acceptable Use of the Service

8.1 The Service is provided for use by the Customer in the course of its business and on the condition that the Customer does not resell or otherwise make available to a third party the Service or Supplier Equipment without the written consent of the Supplier.

8.2 The Customer undertakes to use the Service and the Supplier Equipment in accordance with any conditions and/or instructions, which the Supplier notifies to the Customer in writing.

8.3 The Customer accepts that the Service must not be used (and shall not allow others to use the Service):

- (a) in breach of any licence, code of practice, instruction or guidelines issued by any applicable regulatory authority or the Acceptable Use Policy;
- (b) to distribute, transmit, receive, upload or download any content which is abusive, indecent, offensive, menacing, or which may cause annoyance or distress to any third party;

(c) in such a way that Supplier reasonably believes that such use is likely to be detrimental or endanger the security or integrity of the Service or the Supplier Network;

(d) in breach of this Agreement or the Law;

(e) in any way that is unlawful or fraudulent.

8.4 The Customer agrees to comply with any reasonable instructions issued by Supplier concerning the safety, security or quality of the Service.

8.5 The Supplier may at its discretion immediately on notice to the Customer suspend the Service and/or terminate this Agreement if the Customer is in breach of this clause 8. The Customer will indemnify the Supplier against all liabilities, claims, damages, losses, proceedings or threatened proceedings arising out of or in any way connected with the use of the Service in contravention of this clause 8.

9. Access to Site

9.1 In order to perform its obligations the Supplier will require access to the Site. The Customer consents and shall permit the Supplier access to, from time to time, upon the giving of reasonable notice (except in the case of an emergency) those parts of the Site or other premises including land:

(a) necessary to the extent that they are used for the purposes of the provision of the Service; and

(b) required to perform the works in connection with the Installation Services, maintenance, adjustment, repair, moving, replacement, renewal or removal of the Supplier Equipment at or on the Site, premises or land.

9.2 The Customer shall (at its own expense) procure or provide such further consents and/or rights that may be required for the Supplier to exercise the rights in clause 9.1 or to deliver the Service.

9.3 The Customer undertakes to provide a safe and suitable working environment for the Supplier's employees, subcontractors or agents at the Site.

9.4 The rights in this clause 9 shall subsist for the duration of this Agreement and for such other periods thereafter to enable the Supplier to disconnect the Supplier Equipment and remove it from the Site.

10. Service Levels

10.1 The Supplier will use the reasonable skill and care of a competent electronic communications provider in providing the Service. However the Customer accepts that the Supplier cannot guarantee that the Service will be continuously available or free of fault from including intermittent faults.

10.2 The Supplier will use its reasonable endeavours to comply with the obligations set out in the SLA. The Supplier shall have no liability other than that expressly set out in the SLA in relation to a failure to meet the service levels (if any).

11. Charges

11.1 The charges for the Service are set out in the Pricing Schedule and where appropriate will be documented as part of the Order.

11.2 The Customer is responsible for paying for the Service whether the Customer or any third party uses the Service.

11.3 Invoices will be charged in pounds sterling. Invoices will be delivered to the email address of the Customer set out in the Order or will be otherwise made available for access online and Supplier will inform the Customer when an invoice can be viewed online. Provision of a paper copy of the invoice will incur a separate charge.

11.4 Supplier will store invoices for a minimum period of 12 months and if during this period, the Customer requires a copy of any invoice for any purpose, a copy of such invoice will be provided.

11.5 Unless stated otherwise in the Order, Supplier will invoice monthly in advance. In respect of Installation Charges, these will be invoiced upon signing of the contract. A month's charges or such other sum as agreed will usually be required by Supplier as a deposit. In certain circumstances Supplier may accept a guarantee of payment instead of a deposit. The deposit may be applied against any unpaid and overdue Charges and any outstanding amount of the deposit will be applied to settle in whole or in part any outstanding charges at the end of this Agreement. Any amount of the deposit remaining unallocated will be returned to the Customer at the end of this Agreement.

11.6 Charges will normally accrue from the Operational Start Date of the Service unless otherwise stated in the Order or the Service Schedule. Payment of the Charges will be immediate upon receipt of the invoice. Payment of the Installation Charges will be due on the date specified on the invoice.

11.7 Charges will be paid by direct debit or on a monthly payment plan or another form of payment acceptable to Supplier. The Customer must advise the Supplier promptly of any changes to its bank details that affect payment of the Charges.

11.8 Where under this Agreement a Service Credit or other sum becomes payable by the Supplier to the Customer, then the Supplier shall be entitled to deduct the sum from the Charges due from the Customer.

11.9 Charges will be exclusive of any tax or similar payment obligations and if applicable such taxes will be applied to any invoice at the then prevailing rate.

11.10 The Supplier may undertake credit verification checks of the Customer and the Customer will cooperate with the Supplier in order for this to be done.

11.11 The Supplier may increase any recurring Charges at any time on thirty (30) days written notice to the Customer to take effect after the expiry of the Minimum Service Period. The Customer shall be entitled to terminate this Agreement by notice in writing within seven (7) days of the receipt of the Supplier's written notice. If the Customer does not terminate this Agreement within this period it shall be deemed to have accepted the increase in Charges.

11.12 The Supplier shall be entitled to increase any one-off Charges on thirty (30) days written notice or publication on the Supplier's website.

12. Late Payment of Charges

12.1 If the Charges are not paid when due:

- (a) the Supplier may apply any deposit provided by the Customer pursuant to clause 11.5 to cover such Charges; and/or
- (b) impose a late payment charge as set out in the Order and/or the Service Schedule, and/or
- (c) apply interest on the overdue amount on a monthly basis at the rate of 3% above the base rate of Natwest Bank for a period commencing on the date that the payment of charges became overdue and ending when payment is received.

12.2 The Supplier may engage a debt collection agency to recover any outstanding charges. In such circumstances, the Customer will pay all reasonable costs incurred by the Supplier in engaging such an agency.

13. Disputed Charges

13.1 Where the Customer is disputing any part of the Charges, it will inform the Supplier as soon as possible and in any event within 2 weeks of the date of the applicable invoice. Where the amount in dispute is:

- (a) less than 10% of the total amount of the Charges invoiced, the Customer will pay the full amount of the invoice; or
- (b) greater than 10% of the total amount of the Charges invoiced, the Customer will not pay the disputed amount unless or until the dispute is resolved in favour of the Supplier pursuant to clause 13.2.

13.2 Where a dispute arises, both parties agree to negotiate in good faith in order to resolve the dispute promptly. Once resolved any amount agreed to be paid will be payable promptly.

14. Changing this Agreement

14.1 Subject to clause 11.11 above the Supplier may vary the terms of this Agreement at any time by posting the changes on the Website and where reasonably practicable, giving the Customer prior written notice.

14.2 If any variation of the terms of this Agreement pursuant to clause 14.1 is likely to cause a material detriment to the Customer the Supplier shall also:

- (a) notify the Customer of the variation in writing at least one month prior to the effective date (as set out in the notice) of such variation; and
- (b) the Customer shall have the right to terminate this Agreement with immediate effect by notice in writing to the Supplier.

14.3 The Customer agrees that if it continues to use the Service after such variation has been implemented in accordance with the written notice from the Supplier it shall be bound by the terms of this Agreement as varied.

14.4 The Customer may request a change in the Service by notice in writing. The Supplier will endeavour to comply with such request. The Customer shall be liable to pay any charges for such change, which shall be payable prior to the Supplier undertaking any work. Any change in the Service and/or any Supplier Equipment may result in an increase in the Charges payable by the Customer. For the avoidance of doubt the Customer shall not be able to terminate this Agreement for any increase pursuant to this clause 14.4.

15. Suspension

15.1 The Supplier may suspend the provision of the Service or any part thereof (without liability to the Customer):

- (a) in the case of an emergency or to protect life, limb or property;
- (b) temporarily to vary the technical specification of the Service, or to repair, maintain or improve the Service, the Supplier Equipment or the Supplier Network;
- (c) to take action necessary (in the Supplier's reasonable opinion) to comply with the instructions issued by the Government, a regulatory authority, an emergency service or any other competent authority;
- (d) during any period in which access to a network used to provide the Service is denied or restricted to the Supplier by a third party operator;
- (e) if the Customer fails to make payment when payment falls due;
- (f) if the Supplier has reasonable cause to believe that the Customer is in breach of clause 8; or
- (g) in any circumstance in which the Supplier is entitled to terminate this Agreement.

15.2 The Supplier shall, except in the case of an emergency (in which case no notice is required), provide as much notice as is reasonably practicable prior to any suspension pursuant to clause 15.1.

15.3 If the Service (or part thereof) is suspended due to a default by the Customer, the Customer shall still be liable for:

- (a) the payment of the Charges during the suspension;
- (b) the reimbursement of the Supplier's reasonable costs and expenses in implementing the suspension; and
- (c) where the Supplier agrees to recommence the Service the Supplier's reasonable costs and expenses for the commencement.

15.4 Any suspension of the Service (or part thereof) due to a default by the Customer shall not exceed a period of 30 consecutive days.

15.5 Any right to suspend the Service (or any part thereof) shall not exclude or prejudice the Supplier's right to subsequently terminate this Agreement pursuant to clause 16.

16. Termination

16.1 The Customer may cancel the Service at any time before the Operational Service Date provided that it pays any Early Termination Charge specified in the Order.

16.2 Unless there is a Minimum Service Period specified in the Order for the provision of the Service, or where such period has expired, either party may terminate this Agreement on one (1) months prior written notice to the other party.

16.3 Subject to clause 17, in the event that the Customer wishes to terminate this Agreement prior to the expiry of any Minimum Service Period, it may do so on thirty (30) days prior written notice.

16.4 The Customer may terminate this Agreement by notice in writing to the Supplier with immediate effect if:

(a) the Supplier commits a material breach of this Agreement and where such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of being required by the Customer to do so; or

(b) the Supplier ceases to do business or has a receiver or liquidator appointed, passes an order for winding up or otherwise becomes insolvent, or makes any arrangement with its creditors.

16.5 The Supplier may terminate this Agreement by notice in writing to the Customer with immediate effect if:

(a) the Customer breaches this Agreement and if the breach is capable of being remedied, fails to remedy the breach to the satisfaction of the Supplier within thirty (30) days of being required by the Supplier to do so;

(b) the Customer fails to pay any sums due within fourteen (14) days of receiving written notice from the Supplier indicating that the sums are due and demanding payment;

(c) the Customer ceases to do business has a receiver or liquidator appointed, or becomes bankrupt or is dissolved, or has insolvency proceedings started against or otherwise makes any arrangement with its creditors;

(d) the Service is being used in a way which contravenes this Agreement or the Acceptable Use Policy, even if the Customer may be unaware that the Service is being used in this manner;

(e) the Supplier ceases to be authorised or if its authorisation is revoked or modified in any way which has a material impact upon the Supplier's ability to provide the Service (or part thereof) or if the Supplier is prohibited or restricted in its entitlement to provide the Service (or part thereof); or

(f) any contract (or part thereof) between the Supplier and a third party operator is terminated where such termination effects the provision of the Service.

17. Post Termination Obligations

17.1 The Supplier reserves the right to charge the Customer an Early Termination Charge if:

(a) the Customer terminates this Agreement during any Minimum Service Period pursuant to clause 16.3; or

(b) the Supplier terminates this Agreement pursuant to clauses 16.5(a), 16.5(b), 16.5(c) and 16.5(d) during any Minimum Service Period.

The Customer agrees that the Early Termination Charge is a fair and reasonable assessment of the losses and damage that the Supplier will suffer as a result of the Customer's early termination.

17.2 For the avoidance of doubt, the Early Termination Charges will not be payable if the Customer terminates this Agreement pursuant to clauses 3.4, 11.11 and 16.4.

17.3 Once this Agreement is terminated, the Supplier will repay any money due to the Customer after all Charges and other sums owed by the Customer have been paid.

17.4 Once this Agreement has been terminated, the Supplier:

(a) will stop providing the Service and access by the Customer to the Supplier Network and the Supplier Equipment will cease;

(b) arrange for the disconnection of the Supplier Equipment from the Supplier Network; and

(c) delete any documentation such as emails which may have been stored by Supplier on behalf of the Customer as part of the Service.

17.5 In the event of termination (other than in respect of a Supplier breach) the Customer shall return any Supplier Equipment to the Supplier within thirty (30) days of the date of termination. If the Customer fails to return or wishes to retain the Supplier Equipment the Supplier reserves the right to charge the Customer for the standard charge for that Supplier Equipment.

18. Intellectual Property Rights

18.1 Any Intellectual Property Rights whether existing prior to or created by Supplier or the Customer whilst this Agreement is in force will belong to that party or its licensors and the other party is granted a limited non-exclusive licence to use such Intellectual Property Rights for the purposes of providing and/or using the Service.

18.2 Where Supplier provides Software to enable the Customer to use the Service, Supplier grants the Customer a non-transferrable and non-exclusive licence to use the Software only for it to access and use the Service and in accordance with any further documentation which may have been provided by Supplier to the Customer including, where applicable, the licensing terms of any third party provider of the Software. The licence of any Software will terminate when Supplier stops providing the Service.

18.3 Unless authorised by Supplier, the Customer agrees not to copy, de-compile or modify any Software or authorise any third party to do so.

18.4 Supplier agrees to indemnify the Customer against all claims or demands arising from the Customer's use of the Service or any Software supplied by Supplier that such Software infringes the Intellectual Property Rights of any third party. This indemnity will not apply if the claim arises from:

- (a) use of the Service or any Software in combination with any equipment or software not supplied by Supplier or otherwise authorised by Supplier;
- (b) use of the Service or any Software otherwise than as expressly permitted under this Agreement;
- (c) any unauthorised change to the Software or Service.

18.5 In relation to any claim or allegation of infringement, the Customer will inform Supplier immediately in writing and will not make any admission without Supplier's prior written agreement. Supplier will have sole conduct of all negotiations or proceedings in relation to such claim and the Customer will give Supplier all assistance it may require. This indemnity is the Customer's only remedy for any claim for infringement of any Intellectual Property Rights.

18.6 If the Service becomes the subject of a claim of infringement of a third party's Intellectual Property Rights or Supplier believes this is likely, Supplier may of its option:

- (a) terminate this Agreement;
- (b) ensure that the Service is no longer infringing;
- (c) secure a continued right to use the Intellectual Property Rights of the third party in relation to the Service.

19. Limitation of Liability

19.1 Nothing in this Agreement shall limit or exclude either parties' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation.

19.2 Subject to clause 19.1, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of:

- (a) the aggregate Charges paid by the Customer to the Supplier during the preceding 12 months relating to the Service giving rise to such a claim;
- (b) £ (depends on service subscribed to).

19.3 Subject to clause 19.1, the Supplier will not be liable to the Customer for any indirect or consequential loss or damage arising under or in relation to this Agreement no matter how including:

- (a) loss of profit or revenue;

(b) loss of business or any business opportunity or loss of any contract;

(c) loss or destruction of data;

(d) wasted expenditure;

(e) loss or damage to goodwill.

19.4 The Customer should obtain its own business continuity insurance.

19.5 This clause 19 does not apply to any indemnities provided under this Agreement.

19.6 This clause 19 shall survive termination of this Agreement.

20. Force Majeure

20.1 Supplier will not be liable for any failure or delay in providing the Service if it is due to:

(a) the failure or delay of a third party operator's network which is necessary to provide the Service; or

(b) any legal or regulatory requirement to which Supplier must adhere; or

(c) any other matter beyond its reasonable control including an act of God such as a fire, hurricane, earthquake or other natural disaster, explosion, war, civil disorder or act of terrorism, industrial dispute or acts of government or regulators or acts or omission of parties over which it has no direct control.

21. Confidentiality

21.1 Supplier and the Customer will not disclose any Confidential Information of the other party supplied to it by that other party under or in connection with this Agreement except to:

(a) their employees or professional advisers; and

(b) any subcontractors who need such Confidential Information as may be necessary for the performance of this Agreement or the provision of the Service.

21.2 If either party receives a request from regulatory authority or court to disclose any Confidential Information supplied by the other party, it may supply such information provided that it has:

(a) satisfied itself that such request is legal;

(b) given the other party as much as possible in which to dispute the request when complying with such request; and

(c) specified when complying with the request that the required information is the Confidential Information of the other party.

21.3 This section will not apply to information that is:

- (a) obtained from a third party who has the lawful right to disclose it;
- (b) in the public domain other than through a breach of this Agreement;
- (c) developed by the receiving party independently of the Confidential Information supplied under this Agreement; and
- (d) in the possession of the Customer or Supplier before the information was disclosed under this Agreement.

22. Dispute Resolution

22.1 If a dispute arises in relation to this Agreement, the party wishing to raise the dispute will provide in writing all relevant details to the other party relating to the nature and extent of the dispute (the "**Complaint**"). Upon receiving the Complaint, the other party shall appoint a representative who is authorised to resolve the Complaint. If after twenty-one days, the Complaint is not satisfactorily resolved, either party may suggest an alternative dispute mechanism and the other party agrees to participate in such ADR proceedings. Any ADR will be held in Gibraltar and in the English Language.

22.2 Both parties agree that clause 22.1 does not stop Supplier or the Customer from exercising any rights and remedies that it may have under this Agreement in relation to any breach of this Agreement by the other party.

23. Waiver

23.1 Any failure or delay by either party in exercising any right or remedy under this Agreement will not be waiver of that right or remedy. Where either Supplier or the Customer waives any right or remedy under this Agreement, that waiver will relate only to the particular right or remedy being waived.

24. Notices

24.1 Any notice required to be given under this Agreement will be in writing and delivered by email, courier or post to the following addresses:

- (a) if to the Customer to the address on the Order or the email address on the Order or the email address to which invoices are sent or if applicable, the Customer's principal office in Gibraltar; and
- (b) if to Supplier to its contact details set out in the Order.

24.2 A notice will be deemed to have been properly served:

- (a) if delivered by courier, at the time of delivery;
- (b) if sent by email at the time of a successful transmission;
- (c) if sent by post, five days after the date of posting.

24.3 Either party will inform the other party as a matter of priority if there is any change in its contact information for the purposes of this Agreement.

25. Governing Law and Jurisdiction

25.1 This Agreement is governed by the laws of Gibraltar and the parties agree that it is subject to the jurisdiction of the Courts of Gibraltar.

26. Data Protection

26.1 Both parties will comply with their respective obligations under any data protection regulations or laws, which may apply, to them. Where one party transfers personal data to the other for processing or storage, the receiving party will process that data for the period of and the extent necessary for the performance of this Agreement and will keep such data safe and secure.

27. Regulations

27.1 This Agreement is made expressly subject to all present and future valid orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of Gibraltar. In the event that this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, directive or law, this Agreement or such provision(s) shall be deemed modified to the extent necessary to comply with any such order, rule, regulation, directive or law and shall be modified in such a way as is consistent with the form, intent or purpose of this Agreement.

28. Glossary

Capitalised terms used in this Agreement shall have the meaning set out below:

Phrase	Description
"Acceptable Use Policy"	means the rules, limits or restrictions for the use of the Service as may be revised by the Supplier from time to time and which is on the Website;
"Acceptance Tests"	means the Supplier's standard acceptance tests to be carried out in accordance with clause 6 to ensure the Service is ready for use;
"Agreement"	has meaning given to it in clause 1.1;
"Charges"	means the charges for the Service and any Installation Charges as detailed in the Pricing Schedule;
"Conditions"	means these conditions;
"Confidential Information"	means any information of a confidential nature which is supplied under this Agreement irrespective of whether such information has been marked as confidential;
"Customer Equipment"	means any equipment including any software or hardware which is necessary or desirable for use in conjunction with the Service that is not part of the Supplier Network and which is owned or controlled by the Customer;
"Customer"	means the party specified on the Order to whom the Supplier provides the Service;
"Early Termination Charges"	means those charges (if any) detailed in the Order and payable pursuant to clause 17.1;
"Installation Charges"	means the charges incurred or imposed by the Supplier as a result of or arising from the installation of the Service and/or Supplier Equipment at the Site;
"Installation Services"	means the services required to install the Service and/or Supplier Equipment at the Site in accordance with clause 3;

"Intellectual Property Right(s)"	means any copyright, trademark, design right, patent, database right, semi conductor right, right in know how or any similar right;
"Internet"	means the global computer network providing a wide of information and communication facilities and services and consisting of interconnected networks connected using standardised communications protocols;
Law	means any applicable law, statute or regulation, guidance or code of conduct, authorisations or permissions relating to the provision or marketing of the Service including any directives or other requirements issued by a relevant regulatory authority;
"Minimum Service Period"	means the minimum period during which the Service will be provided as set out in the Service Schedule or the Order and which commences from the Operational Start Date;
"Operational Start Date"	means the date on which the Service is first made available to the Customer as set out in the Order or the Service Schedule (subject to the provisions of clause 3);
"Order"	means the order form for the Service;
"Pricing Schedule"	means the Schedule which lists the Supplier's Charges for the provision of the Service;
"Service"	means one or more services agreed by the parties in the Order and as more particularly described in the Service Schedule;
"Service Credit"	means the service credits (if any) detailed in the SLA;
"Service Schedule"	means the Schedule that describes the Service(s) to be provided by the Supplier;
"Site"	means the place(s) from, to or in respect of which the Supplier provides the Service;
"SLA"	means the agreement (between the Customer and the Supplier) which sets out the standard of Service and the consequences if there is a failure to meet such standard of Service;
"Software"	means any computer software and associated written and/or electronic documentation and data provided by the Supplier for the purposes of enabling the Customer to use the Service;
"Supplier Equipment"	means any communications or other equipment, including any Software owned or controlled by the Supplier and installed at the Site in order to provide the Service;
"Supplier Network"	means the high-speed broadband optical fibre communications network operated by the Supplier in Gibraltar;
"Supplier"	means GibFibre, Registered Address: Burns House, 19 Town Range, Gibraltar. Company Registration No: 95162
"Survey"	means any survey or other investigations which the Supplier deems necessary;
"User Security Information"	means any confidential information such as passwords, usernames, personal identification numbers or security codes which allow access to the Service or part of it;
"User"	means any person who is authorised by the Customer to use or access the Service; and
"Website"	www.gibfibre.com