



Smart IT Support Ltd and Smart Office Technology Ltd

# Master Services Agreement

Version: February 2024

# Terms and Conditions

Any use and/or access of any of the Services by or on behalf of the Customer amounts to acceptance in full of these terms and conditions and the agreement by the Customer to all matters set out in the Contract.

## IT IS HEREBY AGREED

### 1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Applicable Data Protection Laws:** means the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

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

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

**Change Order:** has the meaning given in clause 7.1.

**Charges:** the sums payable for the Services as set out in an Order Form.

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company, and controls, controlled and the expression change of control shall be construed accordingly.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in an Order Form and any such items purchased or leased by the Customer under an Order Form.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(e).

**Customer Personal Data:** any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer details of which are included in an Order Form.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in an Order Form.

**Equipment:** the equipment listed in an attachment to an Order Form.

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

**Minimum Period:** a period of 36 months unless agreed between the Supplier and the Customer as set out on the Order Form.

**Order Form:** an order form describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the Order Form.

**Services:** the services described in an Order Form (and no other services).

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

**Site:** the site detailed in an Order Form to which Equipment or, as the case may be, Services are to be provided.

**Software:** the third party software detailed in an Order Form.

**Supplier:** the Smart IT group of companies, being Smart IT Support Limited incorporated and registered in England and Wales with company number 06550863 whose registered office is at Unit D Marquis Court, Team Valley Trading Estate, Gateshead, Tyne and Wear, United Kingdom, NE11 0RU, and Smart Office Technology Limited incorporated and registered in England and Wales with company number 08939587 whose registered office is at Unit D Marquis Court, Team Valley Trading Estate, Gateshead, Tyne and Wear, United Kingdom, NE11 0RU.

**Supplier's contact email address:** contracts@smartitgroup.co.uk

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

**Supplier Personal Data:** any personal data provided by the Customer which is not Customer Personal Data.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.8 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

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

1.10 A reference to **writing** or **written** includes email.

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

1.12 A reference to **this Agreement** or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied or novated from time to time.

1.13 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

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

### 2. Commencement and duration

2.1 This Agreement shall commence on the date when it has been signed by the parties (including by electronic / e-signature) or, if earlier, the date on which goods and/or services are first provided by the Supplier and shall continue, unless terminated earlier in accordance with clause 13 (Termination), for no less than the Minimum Period.

2.2 After the expiry of the Minimum Period, unless otherwise agreed in writing and/or unless the Customer gives no less than 90 days written notice prior to the expiry of the Minimum Period, this Agreement will automatically renew for a further period equal to the Minimum Period. Such automatic contract renewal will be on the same terms, unless otherwise agreed in writing.

2.3 The above paragraph shall not apply in respect of the Supplier's Telecoms Services under Schedule 12 if and to the extent that the Customer's business meets criteria as defined by Ofcom which would classify the Customer as a small business consumer (with ten employees or fewer)), in which case the provisions of Schedule 12 shall apply.

2.4 The Customer acknowledges and agrees that if it treats the Agreement as at an end other than in accordance with the provisions of clause 13, the Supplier shall be entitled to invoice the Customer for the Charges that would have been payable for the remainder of the current Minimum Period, discounted for accelerated receipt.

2.5 The Customer further acknowledges and agrees that any cancellation of an Order Form at the request of the Customer shall be at the absolute discretion of the Supplier and may be subject to conditions.

### 3. Quotations and Order Forms

3.1 A quotation by the Supplier is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before signature of the Order Form by the Supplier. Except where the Order Form states that the Charges are fixed, the Charges will be based upon time spent in provision of the Services. Any fixed Charge shall be adjusted in accordance with the provisions of clause 7.

3.2 The Customer must ensure that the terms of any order included on an Order Form (including any specification) are complete and accurate and that the Supplier is provided with any necessary information relating to the provision of Services.

3.3 Each Order Form shall be agreed in the following manner:

- (a) the Customer shall ask the Supplier to provide any services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Order Form for the services requested;
- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
  - (i) inform the Customer that it declines to provide the requested services; or
  - (ii) provide the Customer with a draft Order Form.
- (c) if the Supplier provides the Customer with a draft Order Form pursuant to clause 3.3(b)(ii), the Supplier and the Customer shall discuss and agree that draft Order Form; and
- (d) the Customer shall sign (including by electronic / e-signature) the draft Order Form when it is agreed.

3.4 Once an Order Form has been agreed and signed in accordance with clause 3.3(d), no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 17 (Variation).

3.5 Each Order Form shall incorporate the Schedules of this Agreement detailed in the Order Form and shall be part of this Agreement and shall not form a separate contract to it.

3.6 Notwithstanding the previous clauses, if at its discretion the Supplier accepts an order for Services placed other than on its standard Order Form (a "Customer Order Form") or if the Supplier installs a Service without having received from the Customer and/or accepted either the Supplier's standard Order Form or a Customer Order Form, the Services shall be provided in accordance with the terms of this agreement.

3.7 The Supplier reserves the right to make any changes in the specification of the Services which are required to conform with any Applicable Law or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

### 4. Supplier's responsibilities

4.1 The Supplier shall provide the Services, and deliver the Deliverables to the Customer, in accordance with an Order Form in all material respects.

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in an Order Form but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.

4.3 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any Site and that have been communicated to it under clause 5.1(f),

provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

## 5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) comply with any applicable practices and procedures of the Supplier;
- (c) appoint a manager in respect of the Services to be performed under each Order Form, such person as identified in the Order Form. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Services (including by signing Change Orders);
- (d) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in an Order Form and, where applicable, working space and adequate facilities including electrical outlets within a reasonable distance of the Equipment;
- (e) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under an Order Form or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (f) inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
- (g) ensure that all the Customer Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant UK and international standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- (i) keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- (j) comply with any additional responsibilities of the Customer as set out in the relevant Schedule and/or Order Form.

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

5.3 The Customer shall indemnify and keep indemnified the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with its use of the Services and the Customer Equipment.

## 6. Non-solicitation and employment

6.1 The Customer and its Affiliates shall not, without the prior written consent of the Supplier, at any time from the date on which any Services commence to the expiry of 12 months after the completion of such Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Services.

6.2 Any consent given by the Supplier in accordance with clause 6.1 shall be subject to the Customer paying to the Supplier a sum equal to the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

## 7. Change control

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

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any of the other terms of the relevant Order Form.

7.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

7.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Customer.

7.4 If the parties:

- (a) agree to a Change Order, they shall sign it (including by electronic / e-signature) and that Change Order shall amend the relevant Order Form; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26.

7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at the Supplier's standard daily rates.

## 8. Charges and payment

8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges on the Payment Terms (or if none are specified in the Order, within 30 days of invoice date). The Charges are not refundable.

8.2 Where the Charges are calculated on a time and materials basis:

- (a) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked during Service Hours and any part day shall be charged as a full day;
- (b) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for any time worked by individuals whom it engages on the Services outside Service Hours; and
- (c) the Supplier shall upon request provide details of time spent by each individual whom it engages on the Services and the Supplier shall indicate the time spent in its invoices.

8.3 The Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are set out in the Order Form or approved by the Customer in advance from time to time.

8.4 The Supplier reserves the right to annually adjust the service price in accordance with changes in the UK Consumer Price Index (CPI) plus 3.9%, as published by the Office for National Statistics or its successor. In the event of such adjustment, the Supplier shall provide the Customer with a 30-day notice of the revised Charges, notice can be provided with your monthly invoice. During this 30-day period, the Customer may terminate this Agreement by providing written notice to the Supplier. However, if the price increase is equal to or below the percentage change in CPI + 3.9%, the Customer shall not have the right to terminate the Agreement during this period. The adjusted Charges shall take effect on the expiry of the 30-day notice period and shall remain in force until the subsequent adjustment. It is understood that the service price shall not be adjusted downward, and any increase in the CPI resulting in a negative percentage change shall be treated as zero for the purposes of this provision.

8.5 The Supplier shall be entitled to increase the Charges at any time with immediate effect where the Supplier can reasonably demonstrate that such an increase is due to an increased cost of providing the Services caused by a third party supplier, or legal or regulatory change. Any such increase in the Charges will not exceed the increased cost incurred by the Supplier in providing the Service.

8.6 The Supplier retains the right to adjust any Charges at any time on 30 days' notice to the Customer. In the event of a Charge adjustment for reasons other than those set out under clauses 8.4 or 8.5 above, the Customer shall be entitled to terminate this Agreement by notice to the Supplier at any time in that 30 day period.

8.7 The Supplier shall invoice the Customer for the Charges at the intervals specified in the Order Form. If no intervals are so specified, the Supplier shall invoice the Customer at the start of each month:

- (a) for Services to be performed during that month and any deposits due in respect of that month; and
- (b) for all other supplies, for supplies made in the previous month.

8.8 The Customer shall pay each invoice submitted to it by the Supplier for Services immediately upon receipt and all other invoices within 30 days of date of invoice to a bank account nominated in writing by the Supplier from time to time.

8.9 The Supplier reserves the right to apply a nominal monthly charge (currently £3) for non direct debit payment methods. Such charge may be varied by the Supplier and notified to the Customer from time to time. The Customer acknowledges and agrees that the nominal monthly charge for non direct debit payment methods represents a fair and genuine administration charge to compensate the Supplier for the time and cost involved in collecting non direct debit payments.

8.10 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
- (b) without prejudice to its right to recover the Charges in full, the Supplier may suspend part or all of the Services until payment has been made in full.

8.11 All sums payable to the Supplier under this Agreement:

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

8.12 Time of payments is of the essence.

8.13 For the purposes of this agreement, payment is received when the Supplier receives it in cleared funds.

8.14 The Supplier is entitled to set off sums owed by the Supplier to the Customer against sums owed by the Customer to the Supplier.

## 9. Intellectual property rights

9.1 Ownership of all IPRs (including IPRs in the Deliverables) shall remain with the Supplier at all times but upon payment by the Customer of all Charges payable under this Agreement, the Supplier shall provide a copy of the compiled code to any software Deliverables to the Customer. No other IPRs shall transfer to the ownership of the Customer under this Agreement.

9.2 In relation to the Customer Materials, the Customer:

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

9.3 The Supplier:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 12.6, indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Services and Deliverables.

(c) shall not be in breach of the warranty at clause 9.3(a), and the Customer shall have no claim under the indemnity at clause 9.3(b) to the extent the infringement arises from:

- (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
- (ii) any modification of the Services or any Deliverable, other than by or on behalf of the Supplier; and
- (iii) compliance with the Customer's specifications or instructions.

9.4 The Customer:

- (a) warrants that the receipt and use in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to 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 or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

## 10. Data protection

10.1 For the purposes of this clause 10, the terms **controller, processor, data subject, personal data, personal data breach and processing** shall have the meaning given to them in the UK GDPR.

10.2 Each party will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

10.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

- (a) the Supplier shall process any Customer Personal Data as processor on behalf of the Customer; and
- (b) the Supplier shall act as controller of any Supplier Personal Data.

10.4 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier and/or lawful collection of the same by the Supplier for the duration and purposes of this Agreement.

10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) 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;
- (d) 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;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 10.5(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 10, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

10.6 The Customer provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
  - (i) 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 the Supplier in this clause 10;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
  - (iii) 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 the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, 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).

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or any member of the group of companies to which the other party belongs, except as permitted by clause 11.2(a).

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 12. Limitation of liability

12.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £200,000 (professional indemnity insurance); and £1,000,000 (public and product liability insurance). The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 References to liability in this clause 12 (Limitation of liability) include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4 The Customer agrees that it has sole responsibility for results obtained from the use of the Customer Equipment and/or Services by the Customer.

12.5 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.6 Subject to clauses 12.3 and 12.4 and to any alternative liability limit specified in an Order Form, the Supplier's total liability to the Customer:

- (a) where the claim relates to goods supplied under this Agreement, an amount equal to the Charges for those goods;
- (b) where the claim relates to the Services supplied under this Agreement, an amount equal to the Charges for those Services; or
- (c) for all other loss or damage which does not fall within another subclause of this clause, an amount equal to the sums paid under all Order Forms in the twelve months preceding the date of the claim.

12.7 Subject to clauses 12.3 and 12.4 (Liabilities which cannot legally be limited), this clause 12.7 specifies the types of losses that are excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

12.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.1 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

## 13. Termination

13.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement or any Order Form with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement or any Order Form or suspend its provision of Services with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

(b) the Customer is in breach of a material term of this agreement;

(c) the Supplier has reasonable grounds to suspect that information provided by the Customer is inaccurate, not current, false, misleading or incomplete and/or that the Services are being used by the Customer in connection with any illegal activity; or

(d) the Customer exceeds any allowances specified in the Order Form including in relation to space and bandwidth, memory and the central processing unit;

(e) the Customer participates in unsolicited, commercial e-mailing; illegal access to other computers or networks; distribution of viruses or similar destructive activities; and other activities that the Supplier reasonably determines to be harmful to its other customers, operations, or reputation;

(f) the Service is the subject of, legal action or threatened legal action, against the Supplier or any of its affiliates or partners;

(g) the Supplier or its suppliers discontinue all or part of the Services; or

(h) there is a change of Control of the Customer.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement or any Order Form with immediate effect by giving written notice to the Customer if:

(a) the Customer is in not in compliance with Applicable Laws;

(b) a third party brings a claim or threatens to bring a claim against the Supplier in respect of Customer Materials; or

(c) the Customer misuses any Service.

13.4 Where the Customer cancels part only of a bundle of Services, the Supplier reserves the right (in addition to its other rights under this agreement) to charge the Customer for the Services so cancelled and to amend charges to the Customer for the remaining Services to its standard rates.

## 14. Obligations on termination and survival

### 14.1 Obligations on termination

On termination expiry of this Agreement:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted or in relation to which the Supplier is entitled to invoice under clause 2.3, the Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the Customer shall, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and

(c) the Supplier shall have no obligations to the Customer to store and/or transfer data of the Customer to the Customer or any third party.

### 14.2 Survival

(a) On termination of this Agreement pursuant to clause 13, all existing Order Forms shall terminate automatically.

(b) Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

(c) Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 15. Force majeure

15.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service.

15.2 Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

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

## 16. Assignment and other dealings

16.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

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

## 17. Variation

17.1 Subject to clause 7 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 18. Waiver

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

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

18.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## 19. Rights and remedies

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

## 20. Severance

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

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 21. Entire agreement

21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

## 22. Conflict

22.1 If there is an inconsistency between any of the provisions of this Agreement and the provisions of a Schedule, the provisions of the Schedule shall prevail.

## 23. No partnership or agency

23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

## 24. Third party rights

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 25. Notices

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

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

(b) sent by email to the address specified in the Order Form.

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

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

## 26. Dispute resolution procedure

26.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall promptly take all reasonable steps to discuss and settle the Dispute.

26.2 If the parties are not able to settle the Dispute then either party may refer the matter to Alternative Dispute Resolution and the other party shall participate in that Alternative Dispute Resolution in accordance with the nominated mediator.

26.3 All costs and expenses of the nominated mediator shall be borne equally by the parties.

26.4 If the Dispute is not resolved within a reasonable period, or either party fails to participate or to continue to participate fully in the mediation, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28.

## 27. Governing law

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

## 28. Jurisdiction

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

## SCHEDULE 1- Block Hour Support Services

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Critical Support Request:** anything that prevents a large number of staff from performing their day-to-day duties.

**SLA:** initial response to calls made to the support telephone number provided by the Supplier wherever practicable within 30 minutes in relation to each Critical Support Request.

**Extended Support Hours:** the hours detailed in the Order Form which fall within the following time periods: 7:00am – 8:30am and 5:00pm – 10:00pm on a Business Day and 9:00am – 17:00pm on a non-Business Day.

**Standard Support Hours:** the hours detailed in the Order Form which fall within the following time periods: 8:30am – 5:00pm on a Business Day

### 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services during the Support Hours in the Order Form during the Minimum Period.

### 3. Charges

3.1 The Supplier shall record time spent in providing the Services in hourly units for Services provided at the Customer's premises and in half-hourly units for remote Services. The Customer is entitled to receipt of the number of hours stated in the Order Form and any hours not used during the support period shall expire automatically at the end of the support period. Once those hours are exhausted, the Supplier shall be entitled to charge for any Services provided during Standard Support Hours at its normal hourly rate or 150% its normal hourly rate for Extended Support Hours.

## SCHEDULE 2- Hosted Server/Cloud Computing

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

### 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services for the term of the Order Form.

### 3. Availability

3.1 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out where practicable outside normal business hours; and
- (b) unscheduled emergency maintenance.

### 4. Limited Warranty

4.1 The Supplier:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free; or
  - (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
  - (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## SCHEDULE 3 - Domain Management

### 1. Renewal

1.1 The Supplier shall renew any Customer domain name under its control every year unless the Customer gives the Supplier at least 30 days' notice prior to the renewal date.

### 2. Transfer

2.1 The Supplier shall be under no obligation to transfer a domain name to a third party until such time that all sums due from the Customer to the Supplier are paid in full.

## SCHEDULE 4 - Equipment Rental

### 1. Customer obligations

1.1 The Customer shall:

- (a) not move the Equipment from the applicable Site without the prior written consent of the Supplier;
- (b) install the Equipment and provide all services to enable the Equipment to be used at the Site;
- (c) keep the Equipment in good repair and condition (reasonable wear and tear excepted) throughout the term of the Order Form and comply with all instructions for the use of the Equipment which are notified to the Customer by the Supplier;
- (d) keep the Equipment safe and protected against adverse weather as well as against risk of loss or theft while at the Customer's premises;
- (e) not use the Equipment except for the purposes for which it is supplied by the Supplier, nor exceed the floor loading capacity of the Equipment (if any) specified in the list attached to this Order Form;
- (f) ensure that all labels on the Equipment identifying it as the property of the Supplier are maintained in place throughout the term of this Order Form;
- (g) upon request, give the Supplier access to inspect the Equipment during normal business hours;
- (h) immediately notify the Supplier of any loss or damage occurring to the Equipment during the term of this Order Form;
- (i) maintain insurance of the Equipment against fire, lightning, explosion and other similar risks during the term of this Order Form and provide the Supplier with details and evidence of that insurance upon request; and
- (j) in the event of loss of or damage to the Equipment, repair or replace the Equipment at its cost; and
- (k) return the equipment at the expense of the Customer on the expiry or termination of this agreement.

### 2. Supplier obligations

2.1 The Supplier shall only be required to deliver and/or install the Equipment where expressly stated on the Order Form.

## SCHEDULE 5 – Equipment Sale

### 1. Equipment

1.1 The Equipment is described in the Supplier's catalogue as modified by any applicable specification.

1.2 The Supplier reserves the right to amend the specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### 2. Quality

2.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Equipment shall:

- (a) conform in all material respects with their description and any applicable specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (c) be fit for any purpose held out by the Supplier.

2.2 Subject to paragraph 2.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that the Equipment does not comply with the warranty set out in paragraph 2.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.

2.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty set out in clause 2.1 if:

- (a) the Customer makes any further use of such Equipment after giving notice in accordance with paragraph 2.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any specification supplied by the Customer;
- (d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

2.4 Except as provided in this paragraph 2, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in paragraph 2.1.

2.5 This paragraph 2 shall apply to any repaired or replacement Equipment supplied by the Supplier.

### 3. Title and risk

3.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

3.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.

3.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) store the Equipment separately from all other Equipment held by the Customer so that it remains readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;

(d) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

- (i) the Equipment; and
- (ii) the ongoing financial position of the Customer.

3.4 At any time before title to the Equipment passes to the Customer, the Supplier may require the Customer to deliver up all Equipment in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

## SCHEDULE 6 – IT Support

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services in relation to the Equipment in the United Kingdom during the Service Hours in accordance with the service levels in paragraph 4.

1.2 The Supplier shall be entitled to charge its standard hourly rates for Services provided outside Service Hours.

### 2. Exclusions

2.1 The Services do not include:

- (a) installation or maintenance of equipment and software other than the Equipment;
- (b) operating accessories including media such as tapes and disc packs or electrical work external to the Equipment;
- (c) the upgrading of any hardware or software.
- (d) Maintenance of any Equipment has not been used in accordance with manufacturer's instructions;
- (e) adjustment, repair or parts replacement required because of accident, neglect, misuse, improper programming, failure of electrical power, air conditioning, humidity control, transportation or causes other than normal use;
- (f) Equipment maintained or repaired by anyone other than the Supplier's personnel without the prior approval of the Supplier (such approval not to be unreasonably withheld);
- (g) Equipment removed from its initial installation location or is reinstalled without the approval of the Supplier;
- (h) Equipment that is more than 5 years old unless the Supplier has expressly agreed in writing to maintain that Equipment;
- (i) recovering files from failed hard drives or completing backups; or
- (j) Equipment that in the Supplier's reasonable opinion has reached the end of its useful life.

2.2 If the Supplier agrees to provide any of the services listed above, it shall be entitled to charge its standard hourly rates for those services.

### 3. Preventive Maintenance And Remote Monitoring

3.1 Where an item of Equipment is a server and the Supplier has agreed to provide preventive maintenance and remote monitoring services, the Services will include the following:

- (a) Applying critical operating systems patches, as recommended by the Supplier.
- (b) Checking from time to time that any anti-virus and spyware software purchased by the Customer from the Supplier have the latest versions and definitions installed and updating where necessary.
- (c) Network administration for the creation, removal and updating of user accounts, shared folders and shared printers. the Supplier reserves the right to charge the Customer for this activity in the event that, in its sole opinion, the Supplier believes that the use of this part of the Service is excessive.
- (d) periodic remote polling of Servers to check that for:
- (i) Exchange Server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
- (ii) SMTP Server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
- (iii) SQL server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
- (iv) CPU usage there is no alert on the Server that this usage is equal to or greater than 95% of its capacity for 10 minutes or more;
- (v) Memory usage there is no alert on the Server that this usage is equal to or greater than 95% of its capacity for 10 minutes or more;
- (vi) Page file usage there is no alert on the Server that this usage is equal to or greater than 99% of its capacity for 10 minutes or more; and
- (vii) Disk usage there is no alert on the Server that this usage is equal to or greater than 90% of its capacity for 10 minutes or more.

3.2 If any of the parameters listed in paragraph 3.1(d) are exceeded the Supplier may attempt to correct the problem without notifying the customer. If this is not possible the Supplier may contact the Customer to discuss what steps the Customer wishes to take.

### 4. Service Levels

4.1 The Supplier shall wherever practicable respond to each emergency support request within four business hours of receipt and all other requests within forty eight hours.

4.2 The Supplier shall provide maintenance at the intervals necessary to keep the Equipment in good working condition.

### 5. Customers Obligations

5.1 The Customer shall obtain, keep and make available to the Supplier:

- (a) machine readable copies of all programs, data files and operating systems relating to the Equipment; and
- (b) any installation media, program disks, product keys, details of serial numbers and licences and any other data provided by the Supplier and the Customer acknowledges that the Supplier is not responsible for any loss of such media and details including any resulting Customer inability to use its machine readable data.

5.2 The Customer will undertake:

- (a) normal back-ups of data and to have available disks, tapes or other media containing back-ups; and
- (b) a back-up immediately prior to the provision of Services by the Supplier under this Schedule.

### 6. Replacement Parts

6.1 The Supplier will provide at cost, all parts and equipment modifications which the Supplier deems necessary for maintaining the Equipment in good operating condition. All parts will be furnished on an exchange basis and will be new equivalent standard parts of equal quality to the part(s) being replaced.

## SCHEDULE 7 – Third Party Software

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Software and (only if stated on the Order Form) installation, backup and/or support of the Software.

1.2 The Supplier shall be entitled to charge its standard hourly rates for Services provided in relation to the Software outside the scope specified on the Order Form.

### 2. Software licence

2.1 The Customer agrees to comply with the terms of each licence applicable to the Software.

## SCHEDULE 8– Server Backup

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the following backups in relation to the virtual machines detailed in the Order Form:

- (a) On commencement of the Services, a complete backup; and
- (b) complete partial, incremental and differential backups at the intervals specified in the Order Form Or, if no interval is specified, every twenty four hours.

1.2 The Supplier is under no obligation to retrieve on behalf of the Customer data which has been lost or corrupted.

## SCHEDULE 9 – Smart Security

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

### 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services detailed in the Order Form in relation to the email addresses listed in the attachment to the Order Form (as amended by agreement of the parties in writing from time to time).

2.2 The Services will be provided in accordance with each applicable specification attached to the Order Form.

### 3. Limited warranty

3.1 The Supplier:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free;
  - (ii) the Software and/or the Services will be capable of protecting against, responding to, or addressing all types of Virus and/or cyber-attack in all respects;
  - (iii) the Software or the Services will be free from Vulnerabilities;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; or
- (c) is not responsible for the manner in which the Customer uses the Services and the consequences of that use.

## SCHEDULE 10 – Website Hosting

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services.

1.2 The Supplier shall be under no obligation to transfer a domain name to a third party until such time that all sums due from the Customer to the Supplier are paid in full and shall be entitled to charge a fee for such transfer.

1.3 The Supplier shall be entitled to monitor the Customer's website and at its discretion delete or modify its contents where such contents do not the opinion of the Supplier meet the requirements of Applicable Laws and/or good industry practice.

## SCHEDULE 11 – Managed Print Service

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Contract Period:** The length of the contract from the contract commencement date.

**Delivery Address:** the address stated on the Order Form.

**Delivery Date:** the estimated date from delivery as specified on the Order Form or if no such date is advised, as soon as reasonably possible.

**Equipment:** the goods to be sold or supplied by the Supplier to the Customer as specified in this agreement.

**Software:** the computer programs, incorporated into the Equipment or which are supplied separately by the Supplier as specified in this agreement

**Software Products:** any software products supplied by the Supplier as detailed in this agreement.

### 2. Delivery

2.1 The Supplier will endeavour to deliver the Equipment to the Delivery Address on or before the Delivery Date but (being an estimate only) such date shall not be of the essence of this Agreement. The Customer agrees that one of its authorised employees will clearly sign and print their name and the date on the delivery note. Delivery of the Equipment shall occur (or be deemed to occur) and the risk of loss or damage of any kind in or to the Equipment shall pass to the Customer when the Supplier (or its agent) has delivered the Equipment to the Delivery Address whether or not the Customer then agrees to accept the same.

2.2 Where the Customer refuses to accept delivery of the Equipment which has not been damaged in the delivery process then (without prejudice to the other rights of the Supplier and in particular its right to regard this agreement as having been repudiated by the Customer) the Supplier may (but shall not be obliged to) store the Equipment for the Customer and the Customer shall pay the Supplier on demand all expenses and costs incurred by the Supplier for transportation and storage of the Equipment provided always that the Supplier may sell the Equipment to a third party, without liability to the Customer, and in such case the Supplier shall only be responsible for the difference between the Purchase Price the Customer was to pay and the actual amount received by The Supplier.

### 3. Property

3.1 Where the Equipment is being sold to the Customer, legal title and property in the Equipment shall not pass to the Customer, and ownership of the Equipment shall remain with the Supplier, unless and until the Supplier has received payment (by way of cleared funds) in full of (a) the Charges (plus any Value Added Tax or other applicable sales tax) and (b) any and all other sums due to the Supplier in respect of all other Equipment and/or services supplied by the Supplier to the Customer under any contract or arrangement whatsoever.

3.2 Until property and ownership in the Equipment passes to the Customer, the Customer shall retain the Equipment in a fiduciary capacity as bailee for the Supplier (returning the same to the Supplier immediately on request) and shall store the Equipment separately from any other items, clearly marked and/or identifiable as the Supplier's property and shall not deal with, encumber, part with possession of or dispose of the Equipment. Until property and ownership in the Equipment has passed to the Customer as aforesaid, the Supplier shall be entitled to repossess and remove and resell the Equipment, and the Customer hereby gives the Supplier irrevocable authority to enter forthwith on to the Customer's premises and/or such other premises where the Equipment may be stored for those purposes and agrees to be responsible for the Supplier's costs, losses and expenses in so doing.

3.3 Where the Equipment is leased to the Customer then legal title and ownership shall always remain with The Supplier or the leasing company as may be specified in the lease agreement.

### 4. Customer obligations

4.1 The Customer shall:

- (a) keep the Equipment in good repair and condition (reasonable wear and tear excepted) throughout the term of the Order Form and comply with all instructions for the use of the Equipment which are notified to the Customer by the Supplier;
- (b) keep the Equipment safe and protected against adverse weather as well as against risk of loss or theft while at the Customer's premises;
- (c) not use the Equipment except for the purposes for which it is supplied by the Supplier, nor exceed the floor loading capacity of the Equipment (if any) specified in the list attached to the Order Form;
- (d) ensure that all labels on the Equipment identifying it as the property of the Supplier are maintained in place throughout the term of the agreement;
- (e) upon request, give the Supplier access to inspect the Equipment during normal business hours;
- (f) immediately notify the Supplier of any loss or damage occurring to the Equipment during the term of the agreement;

### 5. Damage

5.1 Any claim(s) for any damage to the Equipment reasonably ascertainable on careful examination or for any short delivery must be made by the Customer by notice in writing (whether or not previously notified orally) as soon as reasonably possible and in any event within 3 days of delivery of the Equipment following which, and subject to the claim being valid, the Supplier shall at its option repair such damage or replace the Equipment but in the absence of such notification the Supplier shall be discharged from all liability in respect of such damage or short delivery. The Customer will not be entitled to make any claim(s) for any such damage or short delivery after the Customer or its employee or agent has signed a delivery acceptance note in respect of the Equipment. Any claim for non-delivery of the Equipment must be made within 10 days from the date of the Supplier's invoice in respect of the Equipment.

5.2 Where applicable and where permitted, the Supplier shall pass to the Customer the benefit of any manufacturer's product warranty or guarantee.

### 6. Services

6.1 Providing the Customer has signed and entered a Maintenance Contract, The Supplier will maintain the contracted Equipment as specified by the manufacturer, by providing scheduled maintenance visits and attending to breakdown calls promptly and efficiently. This service operates between the hours of 9.00am and 5.00pm from Monday to Friday (except for public holidays) unless otherwise agreed in writing by the Supplier.

6.2 The Supplier will provide all consumables at the intervals recommended by the manufacturer of the Equipment as included in the price for the maintenance. This excludes staples unless specified in this Agreement and any parts which require replacement due to fair wear and tear. Provision of

maintenance and installation of Equipment supplied by the Supplier is subject to the availability of the necessary parts and manufacturers support. Should the supply of parts or manufacturers support cease in any way then the Supplier shall not be obliged to supply the same and the Supplier can cancel the provision of maintenance without penalty, immediately.

6.3 The Customer will only use parts and consumables supplied by the Supplier, or an agent approved in writing by the Supplier. The Customer will use paper and other materials that are specified by and provided by or agreed by the Supplier and agrees to only use consumables supplied on Equipment that is covered under this agreement. If the Customer uses non specified consumable items, then the Supplier reserves the right to charge for any servicing, call outs, labour charges to rectify any faults, howsoever caused. The Customer is liable for the full costs of repair if the Equipment is damaged through accident, misuse, neglect, the use of unsuitable paper or materials, or the failure to observe the correct operation or maintenance procedures. This includes but is not restricted to passing any media, in particular, labels through the Equipment, more than once. The Customer is also liable for any repair costs, if:

- (a) the Customer has not used, stored, or handled the Equipment as specified in the relevant manufacturer's user guides and
- (b) where any faults are caused by any IT equipment, Software or any other equipment not provided by the Supplier and
- (c) if any faults are caused by disconnection and reconnection of the Equipment, movement of the Equipment or modification of the Equipment by someone other than an authorised representative of the Supplier, and
- (d) for any faults to power boards or any other components which have failed due to a power surge howsoever caused. The Supplier strongly recommends that surge protection equipment is fitted to help prevent such occurrences.

6.4 If for any reason this Agreement is cancelled, the Customer will pay for any unused proportions of consumables including but not limited to, Toner, Fusers, Drums, Developer and transfer belts, fitted in, or left with the Equipment.

### 7. Installation

7.1 The Supplier will install and maintain the Equipment at the Delivery Address. The Customer must ensure that the location designated for the Equipment is suitable and complies with current health & safety regulations and that the Supplier's employees or representatives are protected from any hazards at all times when on the Customer's premises.

7.2 The Customer must ensure that any network points, power supplies and phone lines are installed and in good working order and that if the Equipment is to be connected to a network, that all usernames and passwords are available or that an authorised person employed by the Customer is available to provide such information at the time of installation or as requested by the Supplier.

7.3 The Customer will appoint two key operators for the Equipment who will be trained by the Supplier's authorised representative in machine usage and maintenance procedures. The key operators will be responsible for all operational aspects of the Equipment but will not be authorised to carry out maintenance or repair work normally done by the Supplier's service engineer.

7.4 Any delays caused by the Customer's failure to provide any of items specified in this clause will result in a charge for extra time needed on site and any costs incurred in re delivery or re installation.

7.5 The Customer must allow the Supplier to install its automated service management software.

### 8. Relocation or Loss

8.1 The Customer agrees not to relocate the Equipment without obtaining the Supplier's written consent. The Supplier will not usually withhold consent, but relocation may result in an increase of service charges and if requested by the Supplier, the Customer agrees to sign a new contract.

8.2 The Customer agrees to comply with all obligations (including its obligation to make payments of the Charges) even if the Equipment is lost, damaged or stolen.

### 9. Meter readings

9.1 The Customer must allow the Supplier to collect meter readings electronically via the use of the Supplier's automated service software. This will be done at the end of each calendar month. If the meter readings cannot be obtained the Supplier will estimate the volume when raising the invoice and will charge an administration fee. The Supplier will correct any under estimate or overestimate when it next invoices the Customer after it has supplied an actual meter reading.

9.2 In the event that there is a charge for a minimum volume of prints, this will be charged in advance. This charge is payable irrespective of whether the Customer has utilised the Equipment or Service.

### 10. Service charges

10.1 The Customer agrees to pay for the following. All prices can be found in the Supplier's current price list.

- (a) Any Toner unless specified as "Toner inclusive" on the Order Form.
- (b) Any Consumable items, where such consumables are replaced before they require replacement based upon the manufacturers recommended expected life.
- (c) Any excess usage of toner where equipment is specified as "Toner inclusive" on the Order Form. Where the agreement is "Toner Inclusive" the cost per print includes the supply of toner necessary to provide prints on the Equipment to yield an overall average image coverage of five percent. The Supplier is unable to verify that the Equipment is being used within the correct humidity and temperature parameters, therefore excess toner will be charged for, if the toner fails to produce the minimum number of prints as specified by the manufacturer.
- (d) A minimum service charge will be charged for each piece of Equipment if the service yield falls below the stated minimum charge, currently being: £10 per month for mono and £15 per month for colour, unless otherwise stated on the Order Form or as notified to the Customer from time to time.
- (e) An administration charge will be levied for each piece of Equipment if the Customer fails to provide the Supplier with a meter reading.
- (f) A collection charge will be levied at the end of any lease or other finance / rental agreement on each piece of Equipment unless the Supplier is supplying replacement Equipment.
- (g) A monthly charge for IT maintenance will take effect after the first 6 months. This will provide maintenance for network cards, scanner interfaces and fax cards, for any repairs to any peripherals that are attached to the Equipment, and for the deletion of all data from the Equipment upon collection.



(h) A recycling box will be provided for used consumables. This will be free of charge for the first 12 months. Thereafter the Supplier will invoice the Customer for the provision of the recycling box and the removal of any used consumables.

(i) An administration charge where payment is not made by direct debit.

(j) Where this agreement is parts inclusive (due only to fair wear and tear) as specified in the additional provisions overleaf, this will be for a period of thirty-six months from the installation date of the Equipment. Thereafter parts will be charged at the Supplier's standard rate.

## 11. Termination

11.1 Upon termination, the Customer will pay for any unused portions of consumables and drums left in the Equipment and a minimum service charge which is calculated by taking the average usage per month for the 12 months preceding termination and multiplying this figure by the remainder of the Contract Period, or by taking the actual usage throughout the remainder of the Contract Period, whichever is higher. If the Supplier has supplied any other chargeable support such as IT maintenance, then the monthly cost will be multiplied by the remaining term of the agreement and will be added to the termination costs.

11.2 In the event that the average metered volumes fall below 30% of the average consumption of the 1st year of this agreement, the Supplier reserves the right to cancel the agreement without notice and the Customer shall be liable for the termination fees. The Customer agrees that the above costs are a fair and accurate assessment of the Supplier's loss as it represents the Supplier's operating costs, and the early payment discount is applicable because the Supplier has received its payment sooner than it would have if the Agreement had not been terminated.

11.3 In addition to any other rights of the Supplier to end this agreement as set out in this agreement the Supplier may end this Agreement by giving the Customer 30 days written notice.

## 12. Training and Software

12.1 Training and Software support will be provided at the prices agreed in the Maintenance Contract, subject to the terms as listed under clause 8 and 9.

12.2 Software support is understood to be telephone and online support only. The Customer must allow the use of the Supplier's remote access software to resolve any Software issues. Any site visits to resolve any Software issues will be charged at the Supplier's published rates. Travel and subsistence properly incurred in visiting the Customer's premises will be chargeable at cost.

12.3 Where the Supplier provides any upgrades to any Software Products, the Supplier gives no warranty that any upgrade will be of the same functionality, operating system compatibility or suitability as the existing Software Products.

12.4 The Supplier can make no warranty and can accept no liability for the failure or incompatibility of any Software or printer drivers.

12.5 The Supplier will charge for the correction or re-installation of any Software Products or printer drivers that have ceased to work correctly due to the installation or upgrade of any Software or hardware product on the Customer's computer system or network.

12.6 All Software Products supplied by the Supplier to the Customer are subject to the individual license agreements of the software publisher and the Customer agrees to comply with all and any terms and conditions of these licenses. Operation and Functionality of Software are subject to its published specifications produced by the Software owner and any terms of the licence.

## 13. Insurance

13.1 Where the Equipment is under a separate loan or rental agreement the Customer shall keep the Equipment continuously insured with an insurer approved by the Supplier under a full comprehensive policy of insurance, free from restriction or excess, covering the Equipment to its full replacement value against fire, theft, accidental damage and all other risks against which it is commercially prudent to insure, and shall punctually pay all premiums, and, if and when requested to do so, shall produce satisfactory evidence of such insurance to the Supplier. If such evidence is not provided, then the Supplier has the right, but not the obligation, to have insurance protecting the Equipment placed at the Customers expense, which expense shall include the full premium paid for such insurance and shall be paid by the Customer in equal instalments which may be added to each regular payment due under the Agreement.

13.2 The Customer shall hold in trust for the Supplier any money paid to the Customer under any insurance policy relating to the Equipment and hereby irrevocably authorises the Supplier to receive such money from any insurance company and to agree the amount of any claim with the insurance company or any other person and receive payment from them. The Customer must ensure that the goods are insured from the date of delivery.

## SCHEDULE 12 – Telecoms (including mobile and broadband) and Telecoms Maintenance

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**"Act"**: the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof.

**"Airtime Service Provider"**: a third party supplying airtime services to the Customer.

**"Mobile Services"**: the provision of services in relation to mobile telephony.

**"Services"**: the provision of telecom services and/or Equipment and/or Mobile Services and/or Telecom Maintenance and services provided relating to the Internet and any related service provided by the Supplier to the Customer under this agreement.

**"Telecoms Equipment"**: any equipment or product (including for the avoidance of doubt mobile telephones) supplied by the Supplier or by any third party on behalf of the Supplier to the Customer.

**"Telecoms Maintenance"**: telecom maintenance services, being remote and onsite support services, supplied to the Customer by the Supplier as set out in an Order Form.

### 2. The Services and Telecoms Equipment

2.1 Save as provided in these terms and conditions the Supplier shall provide the Customer with such Services and Telecoms Equipment as are requested by the Customer and as are set out in an Order Form.

2.2 Where applicable, the Supplier shall only become liable to supply Service and/or and Telecoms Equipment to the Customer once satisfactory responses to credit checks and criminal bureau checks have been received by the Supplier and (where appropriate) any Airtime Service Provider. The Supplier will monitor and record information relating to a customer's trade performance and such records will be made available to credit reference agencies, who may share that information with other businesses in assessing applications for credit and fraud prevention.

2.3 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related Telecoms Equipment after installation of the Services and the Customer undertakes in particular:

(a) not to cause any attachments other than those approved for connection under the Act to be connected to any Telecoms Equipment.

(b) not to contravene the Act or any other relevant regulations or licences.

(c) not to allow any unauthorised access to the Telecoms Equipment or the Services.

2.4 The Customer hereby agrees that its apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and the Supplier shall not be under any obligation to connect or keep connected any Customer apparatus if it does not comply or if in the reasonable opinion of the Supplier it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by the Supplier.

2.5 The Customer undertakes to use the Services in accordance with the Act and the Supplier's acceptable use policy and fair usage policy (as published from time to time at [www.smartitgroup.co.uk](http://www.smartitgroup.co.uk)) and the Customer further undertakes not to use the Services and to procure that none of its employees use the Services:

(a) as a means of communication for a purpose other than that for which the Services are provided, and

(b) for the transmission or receipt of any material which is defamatory offensive or of an abusive or menacing character or otherwise is in breach of the Supplier's acceptable use policy.

2.6 Any Telecoms Equipment supplied by the Supplier further to a rental agreement remains the property of the Supplier and must be returned at the Customers expense on the expiry or termination of this agreement.

2.7 The Customer will not procure or be party to an agreement or arrangement to provide or receive telecommunications material, Services or services similar to the Services by way of telecommunication provision via the Telecoms Equipment without the permission of the Supplier in writing and the prior payment in full for the Telecoms Equipment. For the avoidance of doubt the use and/or provision of services using the Telecoms Equipment and/or Services which may be deemed by the Airtime Service Provider as a gateway is a material breach of this agreement.

2.8 The Customer shall not publicise any number in any way or commit to any advertising or publicity until such time as it has received from the Supplier in writing confirmation that the number is live and tested. The Supplier will use reasonable endeavours to provide the Customer with the Services by the dates agreed with the Customer and to continue to provide the services until this agreement is terminated.

2.9 The Supplier will not be liable for any loss or damage should the Services not commence or restart on the agreed date. Where the Supplier is supplying network services as part of the Services the Customer must provide to the Supplier details of all the related services that it wishes to receive relating to any telephone number that the Customer wishes to use. The Supplier will provide network Services through such party as it deems appropriate.

2.10 The Customer shall give the Supplier at least 30 days written notice in the event that above average use of the Services is likely to occur. The Supplier shall not be liable for failure/withdrawal of any part of the Services should such notice not be given.

2.11 The Supplier acceptable use policy and fair usage policy form part of this agreement and includes any restrictions imposed on the Supplier by the provider to it of the Services and/or Telecoms Equipment and is designed to protect the level and quality of the services that the Supplier offers to all of its customers and permits the Supplier to regulate the Customer's use of the Services. The Customer acknowledges that, in respect of any broadband speeds, any speeds quoted by the Supplier are approximate only and that the level of service that can be obtained by the Customer will be dependent on factors outside the control of the Supplier including but not limited to the geographical proximity of the Customer to the local exchange and the quality of the infrastructure serving the Customer's premises.

2.12 Where required by the Supplier, the Customer shall ensure that environmental conditions are maintained for Telecoms Equipment.

2.13 The Customer hereby specifically authorises the Supplier to send/resend CPS during the continuance of this agreement, and hereby waives the Supplier's obligation to notify it of the same being done. If the Customer wishes to receive such notification, it must so inform the Supplier in writing.

2.14 Where the Supplier provides software to the Customer as part of the Services and/or Telecoms Equipment the Supplier hereby licences the software to the Customer solely for the use of the same by the Customer in connection with the Services and/or Telecoms Equipment. This licence automatically terminates on termination of this agreement. The Supplier does not warrant that the software will be error-free and the Customer hereby agrees to make proper back-ups of all data.

2.15 Where the Supplier incurs site survey, provisioning, engineering or other fees (whether its own or to a third party) associated with meeting the Customer's requirements and/or subsequently the line does not become operational for any reason then the Supplier has the right to charge the Customer fees of up to £120 per line together with any charges levied on the Supplier by a third party in bringing the associated infrastructure up to the relevant standard.

### 3. Customer Equipment

3.1 The Supplier shall have no liability for any loss or damage arising directly or indirectly from use of the Customer Equipment whether or not the Supplier shall have recommended the use and/or performance of such Customer Equipment.

3.2 Unless otherwise agreed in writing, the Customer is responsible for ensuring that the Customer Equipment is programmed, equipped, compatible and connected for use of the Services in accordance with the Supplier's reasonable instructions and any other instructions or safety and security procedures applicable to the use of Customer Equipment.

3.3 The Customer must ensure that all Customer Equipment is in good working order and complies with applicable standards, approval and any Applicable Laws. The Supplier may require the Customer to disconnect (in which case the Customer must do so promptly) or may itself disconnect any Customer Equipment if in the Supplier's reasonable opinion:

(a) it does not conform to applicable standards, approvals or any Applicable Laws for the time being in force; or

(b) it may cause injury to any person or material damage to property; or

(c) it may materially impair the quality of any Services provided by the Supplier.

3.4 The Supplier has no liability whatsoever where any inability to use the Services is due to incompatibility with the Customer Equipment.

3.5 In the event that the Customer Equipment has least cost routing software, the Supplier may reprogram such Customer Equipment in order to facilitate connection to Smart IT Network.

3.6 In the event that the Customer Equipment does not have least cost routing software, the Supplier may supply such Company Equipment as is necessary in order to facilitate connection to Smart IT Network.

#### 4. Access to premises

4.1 To enable the Supplier to comply with its obligations under the Agreement:

(a) the Customer shall allow or procure permission for the Supplier and any other person(s) authorised by the Supplier to have reasonable access to the Customer's premises and the Services' connection points or, where network connection services form part of the Services, such location on the Customer's premises and/or any neighbouring premises as the Supplier reasonably requires and shall at all times provide such reasonable assistance as the Supplier requests.

(b) the Supplier will endeavour to carry out work by appointment and during normal working hours, but may request the Customer to provide access at other times. If at the request of the Customer the Supplier carries out work outside its normal working hours the Customer will be responsible for the Supplier's reasonable additional charges.

(c) unless otherwise agreed the Customer shall at its own expense carry out such site preparations as the Supplier may reasonably require. Where a site survey is carried out the costs thereof and of any required work identified in the site survey shall be borne by the Customer.

#### 5. Mobile Services

5.1 In respect of Mobile Services and unless the Supplier advises otherwise the Customer shall enter into an agreement direct with the Airtime Service Provider and is responsible for all aspects (including the management) of that airtime service agreement. The Supplier shall assist the Customer wherever possible in the management of the airtime service agreement.

5.2 If the Supplier agrees to reimburse to the Customer charges for specified mobile numbers in respect of the Customer's transferring Airtime Service Provider in respect of such mobile numbers reimbursement must unless otherwise agreed in writing (i) be claimed by the Customer not earlier than four months from the date of transfer and (ii) be only claimed in respect of such mobile numbers as remain live and have not had a notice of termination of agreement served at the date of the claim.

5.3 The Supplier will be paid commission (initially and on an ongoing basis) by the Airtime Service Provider for introducing the Customer and other customers to it. Such commission may be clawed back in certain circumstances due to the act or omission of the Customer, including if the airtime service agreement is terminated or in respect of gateway or unauthorised use by the Customer. The Customer shall indemnify the Supplier against any such claw-back and immediately on demand pay to the Supplier an amount equivalent to that clawed-back.

5.4 Where it is agreed that the Supplier shall pay to the Customer a cash incentive inducement or subsidy for entering into an airtime services agreement, any such amounts must be invoiced by the Customer in three equal amounts such invoices to be dated and delivered at the end of months 6, 12 and 18 of the airtime services agreement. Payment shall only be due to the Customer where the airtime services agreement has not been terminated before the end of the minimum term of the airtime services agreement. The Customer shall produce to the Supplier such evidence as the Supplier may reasonably require as to the continuation in force of the airtime service agreement.

5.5 Any cash incentives or subsidies due under this clause that have not been claimed by the Customer within 14 days from the end of the minimum term of the airtime service agreement become null and void.

5.6 Any Telecoms Equipment supplied in connection with Mobile Services shall be supplied subject to these terms and conditions. The Supplier shall endeavour to supply the Telecoms Equipment as soon as practicable and reserves the right to alter specifications or designs at any time to meet such delivery target.

5.7 All such Telecoms Equipment will be supplied with the manufacturer's guarantee, unless otherwise agreed in writing. The Customer hereby acknowledges that the manufacturer's guarantee is only valid if the Customer complies with the terms and conditions of manufacturer's guarantee.

5.8 The Customer shall be liable for the full costs of any repairs carried out to the Telecoms Equipment which are not covered by the manufacturer's guarantee.

5.9 The Customer agrees that the Supplier shall not be liable for any loss or costs suffered by the Customer:

(a) following any loss by the Customer of Telecoms Equipment and/or the unlawful use thereof by a third party.

(b) resulting from loss of network service or other network issues (including the porting of numbers).

5.10 The Customer shall be liable for the costs incurred by the Supplier of obtaining PAC, MAC or similar codes required for the transfer of the Services

#### 6. Telecoms Maintenance

6.1 The Supplier shall provide (or procure the provision of) such level of Services in relation to Telecoms Maintenance as the Customer has requested and has been agreed as set out in an Order Form.

6.2 The Supplier's obligations to provide Telecoms Maintenance shall not extend to any fault which the Supplier reasonably deems:

(a) has been caused by the act or omission of the Customer;

(b) has been caused by the act or omission of anyone at the Customer's premises or any other third party (including, without limitation, another network operator or communications supplier); and/or

(c) is not a fault relating to the Services (including, without limitation, when the fault is that of the Customer's customers internal network or any third party services not supplied by the Supplier and/or where the relevant Service is shown to operate normally from another location other than the customer's premises indicating that the fault is an internal fault of the Customer).

6.3 The Supplier's obligations to provide Telecoms Maintenance shall also not extend to any configuration changes (e.g. changes to the open/closed hours), updates or any changes/fixes to the Customer's internal equipment such as network switches and cabling, and the Customer's internet supply if provided by a third party.

6.4 During any fault investigations, the Supplier may require the Customer to carry out tests and may require the Supplier to fully and accurately feedback any results of such tests to allow the Supplier to follow its standard procedures and conclude its investigations.

6.5 If a fault in the Service is reported by the Customer and:

(a) the Supplier make arrangements to visit the Customer's site and are unable to obtain the necessary access to the site; or

(b) the Supplier undertakes work to correct the fault but finds no fault present, or finds that a fault has been caused by the act or omission of the Customer,

the Supplier may charge the Customer in respect of such actions in accordance with the Supplier's Price Guide and in any event if the fault is caused by the Customer Equipment a minimum of £95 (exclusive of VAT and applicable taxes) will apply and further charges will be levied in accordance with the Price Guide.

6.6 The Customer hereby duly authorises the Supplier, its dealers and agents to reprogram and or remove existing access equipment in order to provide the Services. In the event that the work is undertaken by the Customer's existing telephone system maintainer and not the Supplier, the Supplier will pay a maximum contribution of £75 plus VAT towards any charges raised by the Customer's existing telephone system maintainer. The Customer shall be responsible for paying all other costs.

6.7 Where BT Openreach charges the Supplier for repairs (and/or engineering call out), and the fault is due to damage to the Customer's equipment, the Supplier reserves the right to invoice the Customer for the amount of such BT Openreach charge together with an administration charge of £25.

#### 7. Charges and Payment

7.1 Usage charges will be such charges for the use of the Services by the Customer as the Supplier may notify to the Customer from time to time by e-mail or by post.

7.2 Details of the Customer's current charges can be obtained by emailing the Supplier at [contracts@smartitgroup.co.uk](mailto:contracts@smartitgroup.co.uk) with full account details. There will be a minimum monthly usage charge and low usage charge for each Service as set out in the Supplier's price list from time to time. Usage charges payable shall be calculated by reference to any data recorded or logged by the Supplier or its service carrier and not by reference to any data recorded or logged by the Customer. The Supplier shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to the Supplier in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

7.3 The Supplier shall be entitled to require the Customer to pay a deposit in respect of future usage charges and the Customer shall pay the amount so required within 7 days of a request for the same.

7.4 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to the Supplier of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to the 6 months prior to the written notification being received by the Supplier and remains at the Supplier's sole discretion, such discretion not to be unreasonably withheld. Such notice must be received prior to the Customer not paying any amount due to the Supplier. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this agreement.

7.5 The Customer remains liable for all charges whether the Customer or someone else used the Services and whether the services were used with the Customer's knowledge and consent or otherwise including and not limited to calls made by a rogue callers and calls made by any third party who has gained unauthorised access to the Customer's system.

7.6 The Supplier retains the right to vary the charges set out in the tariff at any time upon giving the Customer 7 days' notice such notice to be given either on the monthly invoice or on [www.smartitgroup.co.uk](http://www.smartitgroup.co.uk) and continued use of the Services is deemed acceptance of these changes.

7.7 Any calls that are routed by any means beyond the control of the Supplier and for which the Customer is invoiced by another provider will remain the responsibility of the Customer.

#### 8. Suspension of the Services

8.1 The Supplier shall be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on the Supplier by its licence or by any other competent authority (including any network provider), to withdraw or change any telephone number or code or group of numbers or codes allocated to the Customer whether on a temporary or permanent basis provided that the Supplier gives the Customer the maximum period of notice in writing thereof practicable in the circumstances.

8.2 If the Customer's call charges exceed the estimated call spend or the credit limit given to the Customer by the Supplier, whichever is the lower, then the Supplier reserves the right to request immediate payment of the excess amount and to demand that a deposit be paid in such amount as the Supplier shall deem to be reasonable. If payment is not made forthwith by the Customer, the Supplier shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

8.3 Notwithstanding and without prejudice to any of its rights under this Agreement, the Supplier reserves the right to withdraw the Services or any part thereof at any time if the monthly charges to the Customer are not, in the sole opinion of the Supplier, sufficient to make provision of the Services viable for the Supplier.

#### 9. Term

9.1 The Supplier may terminate this agreement immediately if any licence or agreement under which the Supplier or the Customer has the right to run its telecommunications system and in the case of the Customer connect it to the Supplier's system is revoked, amended or otherwise ceases to be valid.

9.2 In the event of termination by either party for any reason, the Supplier shall be entitled to recover from the Customer:

(a) the Telecoms Equipment or cost thereof as appropriate including, where appropriate, but not limited to the cost of installing or removing the Telecoms Equipment;

(b) all liabilities, claims, costs, losses and expenses incurred by the Supplier (including the initial CPS and engineering costs and of providing the Services); and

(c) all losses suffered by the Supplier by way of third party claw-back where such claw back is due to the breach by the Customer of this agreement or the third party agreement.

9.3 Leased lines and certain other services may incur additional charges as a result of third party termination costs incurred by the Supplier. Please enquire for details of applicable charges.

9.4 Where the Customer is a small business consumer (with ten employees or fewer) within the definition of the Ofcom regulations and such regulations apply to the Services being provided to the Customer, the Minimum Period shall be 24 months as opposed to 36 months, and after the expiry of the Minimum Period shall not automatically renew for a further Minimum Period but instead will roll onto a monthly contract which may be terminated by either party giving the other no less than 30 days' notice in writing. For the avoidance of doubt, this clause excludes leased lines and Telecoms Equipment rental.

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