



1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement capitalised terms have the following meaning:

- Access Details:** has the meaning given to it in clause 9.1;
- Activation Date:** the date on which the relevant Service or Product becomes active and available for use by you, as determined in consultation with you, and communicated by us to you;
- Business Day:** a day other than a Saturday, Sunday or public holiday in England and Wales;
- Charges:** the charges payable by you to us for the provision of the Products and Services as set out in the Contract (including Third Party Charges), and any other charges payable pursuant to the Contract (in each case as amended from time to time by us in accordance with the terms of the Contract);
- Confidential Information:** any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product or service information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;
- Contract:** the contract between MLR and the Customer for the supply of Products and/or Services, comprised of the documents referred to in clause 2.2.
- Customer Data:** any data provided or made available to us by you or any Customer Personnel in connection with the performance of the Contract.
- Customer, you, your:** the person or firm who purchases Products and/or Services from us.
- Customer Equipment:** any equipment, tools, hardware and/or software owned, controlled, licensed or provided by you or otherwise made available by you for the purposes of receiving or using the Products or Services;
- Customer Materials:** any data, information, brands, logos, trademarks, graphics, text, sound, data and work and other materials provided by you to us in connection with the Products or Services;
- Customer Personnel:** your employees, agents, contractors, authorised users, and other representatives (and those of any member of your Group);
- Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (DPA 2018) and regulations made thereunder, the UK GDPR (as defined in the DPA 2018), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other applicable legislation and regulatory requirements in force from time to time relating to the use of personal data;
- Effective Date:** as defined in clause 2.6;
- Goods:** any Products that are tangible (including hardware);
- Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company (where 'subsidiary' and 'holding company' are as defined in section 1159 of the Companies Act 2006);
- Insolvency Event:** occurs where a party (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (ii) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on

- business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
  - Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and 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;
  - MLR, we, us, our:** MLR NETWORKS LIMITED incorporated and registered in England and Wales with company number 02311887;
  - Order Form:** the purchase order, email acceptance or other written acceptance of MLR's Quotation issued by the Customer to MLR, setting out the details of the Products and Services to be provided, together with the associated costs.
  - Our Equipment:** any equipment and hardware owned by us or our Third Party Suppliers and used in connection with the performance of the Contract, together with its associated packaging and all supporting documents;
  - Products:** all equipment, software, hardware, and goods detailed on the Quotation and/or which are supplied to the Customer by MLR under the Contract, and any additional or substitute products which MLR agrees in writing to supply to the Customer at a later date in connection with the Contract;
  - Quotation:** the supplier's quotation for the Products and Services to be supplied pursuant to the Contract;
  - Services:** the network and connectivity services (and ancillary services including consultancy, software licensing and hardware supply, as applicable) set out in a Quotation (and **Service** shall be construed accordingly);
  - Service Terms:** any specific terms that apply to a particular Service or Product, as referred to in the Quotation;
  - Software:** has the meaning given to it in clause 5.1;
  - Software Licence:** has the meaning given to it in clause 5.1;
  - Statement of Work:** if applicable, means the statement of work attached to or referred to in the Quotation;
  - Third Party Charges:** the Charges payable by you in connection with Software, services or products provided by any third party, including in particular any Charges payable in respect of any Software Licence(s) that we have purchased or agreed to procure from a Third Party Supplier in order to provide you with the Services.
  - Third Party Supplier:** means (i) any third party that grants us or you a Software licence in connection with the performance of the Services, or (ii) any third party whose goods or services we supply to you in connection with the performance of the Contract, and/or (iii) any of our suppliers or sub-contractors.
- 1.2 Any words following the terms **including, include, in particular, for example** or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.
- 1.3 A reference to **writing** or **written** includes email but not fax.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.

2. CONTRACT

2.1 The Customer appoints MLR to provide the Products and Services pursuant to the terms and conditions of the Contract.



- 2.2 The Contract is comprised of:
- (a) the Quotation (and Statement of Work, if applicable);
  - (b) the Order Form;
  - (c) these Terms and Conditions; and
  - (d) the Service Terms (if any, together with any documents stated therein to be legally binding).
- 2.3 If there is any conflict or ambiguity between the terms of the documents listed in clause 2.1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list, solely to the extent necessary to resolve the conflict or ambiguity.
- 2.4 Subject to clause 2.5 (and save where we expressly agree otherwise in writing with you) to the extent that we or any of our subcontractors provide any services to you which are not set out in the Order Form or Quotation, the provision of such services shall also be subject to these Terms and Conditions and any applicable Service Terms.
- 2.5 Where we have entered into a Support Agreement for the provision of support and maintenance services, that Support Agreement shall govern the provision of such services to the exclusion of these Terms and Conditions.
- 2.6 The Contract shall become binding on the earlier of:
- (a) the signing of these Terms and Conditions by both parties; or
  - (b) the issuing of a written acceptance by us of your Order Form, or confirmation by us that we are proceeding with the work under the Contract; or
  - (c) the commencement by us of the supply of the Products or Services (including the taking of any preparatory steps following the receipt of your Order Form), (the **Effective Date**).
- 2.7 If MLR agrees to provide any Products or Services to any member of the Customer's Group, the Customer shall in all circumstances be liable for the acts and omissions of each member of its Group as though they were the acts and omissions of the Customer.
- 2.8 The Contract is the entire contract between you and us and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter. The terms of the Contract shall apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. You waive any right you may otherwise have to rely on any term endorsed upon, delivered with or contained in any of your own documents that is inconsistent with the terms of the Contract.
- 2.9 Unless otherwise stated therein, our Quotations are valid for a period of 30 days from the date of issue.

### 3. SERVICES

- 3.1 MLR shall supply Products and Services to the Customer with reasonable skill and care and in accordance with the terms of the relevant Order Form or Quotation in all material respects, from the relevant Activation Date for the relevant Product or Service.
- 3.2 MLR shall use reasonable endeavours to comply with any delivery timeframes agreed in the Statement of Work, however time is not of the essence for the performance by MLR of its obligations under the Contract.

### 4. CUSTOMER OBLIGATIONS

- 4.1 The Customer shall:
- (a) co-operate fully with MLR in all matters relating to the Services;
  - (b) provide, to MLR, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, Customer Equipment, office accommodation, data and other facilities reasonably requested by MLR, including any such access as is specified in the the Order Form or Quotation;
  - (c) provide MLR with access to appropriate members of the Customer's personnel, as such access is reasonably requested by MLR, in order for MLR to discharge its obligations under the Contract;

- (d) inform MLR of all health and safety and security requirements that apply at any of the Customer's premises, and provide to MLR in a timely manner all Customer Materials (whether owned by the Customer or third party) required by MLR under any the Order Form or Quotation or otherwise reasonably requested by MLR in connection with the performance of the Contract, and ensure that they are accurate and complete in all material respects;
  - (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required for any building works and/or to enable MLR to provide the Services, including in relation to the installation of Our Equipment, the use of all Customer Materials and the use of the Customer Equipment, and in connection with the installation, maintenance, or removal of Products;
  - (f) provide a secure storage area to store Our Equipment in good condition and not dispose of or use Our Equipment other than in accordance with MLR's written instructions; and
  - (g) where any approvals or consents are required to be given by the Customer in connection with the Contract, give such approvals or consents in a timely manner.
- 4.2 You agree to use the Products and Services in accordance with any reasonable instructions which we give to you from time to time.
- 4.3 Before we perform any Services you will ensure that:
- (a) the premises at which the Services will be performed have been prepared as we reasonably require, and comply with any technical specifications you and we have agreed in writing; and
  - (b) you effect and maintain throughout the provision of the Services insurance cover for the benefit of us and our personnel against any and all foreseeable risks in providing the Services at your premises on terms which are acceptable to us acting reasonably.
- 4.4 You shall comply with all applicable laws and regulations to which you are subject and/or that relate to the performance of the Services or use of the Products.
- 4.5 You acknowledge that if you do not comply with your obligations, such non-compliance may result in a delay to the Activation Date and/or the performance of our other obligations under the Contract. In such circumstances, we may suspend performance of the Services and we will have no liability to you for the same. If you cause a delay in the provision of the Services, and the effect or your act or omission is that any expected milestones relating to the Services have not been met, we may invoice you for the Charges associated with the reaching of such milestone(s) irrespective of the delay, and you shall pay such invoice within 30 days. You shall further reimburse us on written demand for any costs or losses sustained or incurred by us in connection with (a) our engaging of any Third Party Suppliers in connection with the Services, and (b) our inability to deploy personnel employed or engaged by us on other projects, to the extent that such costs or losses arise from your failure to comply with your obligations or any delay in the provision of the Services that is caused by the same.
- 4.6 You shall be responsible for any breach of this clause 4 that arises due to an act or omission of Customer Personnel.

### 5. SOFTWARE

- 5.1 Any software that is provided or made available to you by us and/or our Third Party Suppliers in connection with the Services ("**Software**") is provided subject to such licensing conditions and restrictions as are set out in this Agreement, as may be specified in the relevant Service Terms, and otherwise as are issued by the Software supplier or licensor as appropriate ("**Software Licence**"). You hereby irrevocably agree to the terms of any applicable Software Licences as amended from time to time in accordance with clause 5.2. You agree to, at our request, sign any further Software Licence documentation. You must ensure that you comply with applicable standard specifications and minimum system requirements (if any) in force from time to time relating to the use of any Software.



5.2 Even if there is a provision to the contrary somewhere else in the Contract, you agree that any Software Licence may be terminated by the relevant Third Party Supplier in accordance with its terms. You acknowledge and agree that the terms of any applicable Software Licences may be amended by us or our Third Party Suppliers at any time by notice in writing to you.

5.3 You acknowledge that any Software, and all related documents are in each case licensed to you subject to applicable laws regarding the export of software programs and related documentation, including without limitation, those of the United States of America, the United Kingdom and the European Union. You agree to comply with all such applicable laws.

5.4 You must:

- (a) use the Software only for the purpose of the Services and for your own benefit;
- (b) at all times take reasonable precautions to protect any equipment and/or hardware on which Software is used from unauthorised use;
- (c) not copy, alter, modify, adapt, translate, create derivative works of, distribute, rent, lease, sublicense, assign, transmit, sell all or part of the Software or do so in respect of any media on which the Software is hosted, or any related documents nor attempt to do so nor allow any third party to do so;
- (d) not de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, nor attempt to do so nor allow any third party to do so;
- (e) not avoid, defeat, bypass, remove or deactivate any security measures included in the Software, including those that restrict its functions, nor attempt to do so nor allow any third party to do so;
- (f) not access all or any part of the Software in order to build a product or service which competes with the Software;
- (g) not create any security interest over or in connection with Software;
- (h) not remove, alter, cover or obscure any trade-marks, trade names, service marks, logos or brands, copyright notices, patent numbers or any other statements or symbols of ownership from the Software, any media supplied to you on which any Software is downloaded, any related documents (including permitted copies of the same) or from the packaging in which they are supplied (if any); and
- (i) ensure that Customer Personnel comply with the provisions of this clause 5.4 and the terms of any Software Licence.

5.5 If you contravene, or we suspect that you may have contravened any of clauses 5.1 to 5.4 (inclusive), you agree that we may inform each relevant Third Party Supplier to such effect and co-operate with them in full in investigating such activities.

5.6 We are not responsible for any defect or error in any Software provided by a Third Party Supplier, provided that we shall in such event use reasonable endeavours to procure the correction of the defect or error by the Third Party Supplier in accordance with the terms agreed by us with the relevant Third Party Supplier.

## 6. CUSTOMER EQUIPMENT

6.1 The Customer shall provide to MLR in a timely manner all Customer Equipment (whether owned by the Customer or third party) required by MLR under any the Order Form or Quotation or otherwise reasonably required by MLR in connection with the performance of the Contract, and ensure that the Customer Equipment:

- (a) complies with all applicable instructions, safety and security procedures and laws;
- (b) is at all times maintained in good working order and free from defects, viruses, spyware or other malicious or harmful programs; and
- (c) is technically compatible with the Service and approved for use for that purpose under applicable law and (if applicable) telecommunications industry standards.

6.2 The Customer is responsible for:

- (a) connecting and configuring Customer Equipment to the Customer's network, and the public switched

telecommunications network; and

(b) maintaining and securing you network connections and telecommunications links from your systems to our (or our Third Party Supplier's) data centres, in each case save to the extent that we expressly agree to perform such configuration (or similar) services as part of the Services.

6.3 You are responsible and we exclude liability for, and for all delays, delivery failures and all loss or damage caused in any way by the Customer Equipment and/or your network connections or telecommunications links, save to the extent that any such delay, delivery failure or loss or damage is caused by our breach of the Contract.

6.4 We will not connect, and following a reasonable request from us you will promptly disconnect, any of Customer Equipment if it does not conform with clause 6.1 or if it is likely to cause or does cause death, personal injury or damage to property or is likely to or does impair the quality of any of our services (whether or not Services provided to you).

## 7. GOODS

7.1 Subject to the remaining provisions of this clause, MLR warrants that on delivery (or for Products that MLR is configuring or installing as part of the Services, on completion of those Services as confirmed by MLR to the Customer) the Products shall:

- (a) conform in all material respects with the Statement of Work agreed in writing with the Customer, and be free from material defects in design, material and workmanship;
- (b) be properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- (c) where relevant, accompanied by a delivery note which shows the relevant details of the Order.

7.2 MLR shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

7.3 MLR shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer or previous supplier of any Products to MLR.

7.4 The Customer shall not be entitled to cancel any order for Goods without MLR's prior written consent. MLR shall not be obliged to accept any request for cancellation. If any Customer request to cancel an order is accepted by MLR, MLR may charge a cancellation fee of such amount as MLR determines (in its sole discretion) to be reasonable, which may include a sum in respect of out-of-pocket and third-party supplier costs and expenses.

7.5 The risk in the Goods shall pass to the Customer on delivery. Title to any Goods shall not pass to the Customer until MLR receives payment in full for (a) the Products and Services under the Contract and (b) any other products and services supplied or to be supplied by MLR to the Customer under any other contract.

7.6 Until title to any Goods has passed to the Customer, the Customer must:

- 7.7 not remove any identification mark on the Goods showing that they are the property of MLR or Third Party Supplier of such Goods;
- 7.8 keep the Goods in satisfactory condition, insured to the full replacement value and in suitable environmental conditions;
- 7.9 ensure that no damage is caused to the Goods and not connect anything to, modify, or in any way interfere with the Goods, nor allow any third party (except where authorised by MLR) to do the same;
- 7.10 not move, sell, lease, rent, charge or grant any rights in or to the Goods nor attempt to do any of the same;
- 7.11 notify MLR immediately if there is a breach of clauses 7.7 to 7.10, or if the Customer commits any of the actions or become subject to any of the events listed in clause 14.1; and
- 7.12 provide MLR with such information as it may reasonably require from time to time relating to the Goods and the Customer's financial position.

## 8. CHARGES AND PAYMENT

8.1 The Charges (or method of calculating the same) are set out in the Quotation. You must pay all Charges by direct debit or by such other method as we require from time to time (this may include payment



by BACS, cheque, credit or debit card) to our account listed on our invoice. Where a direct debit has been set up, or any credit or debit card has been provided, we may collect payment of Charges by deduction from your bank account as and when the Charges fall due.

8.2 We may vary the Charges at any time on giving not less than 30 days' notice to you to:

- (a) reflect any increase in the cost to us of performing the Contract that is due to foreign exchange fluctuations;
- (b) reflect any increase in the cost to us of performing the Contract that is due to (i) any request by you to change the Products or Services (or the specification or Scope of Work for the Products or Services); or (ii) any delay caused by any of your instructions, or failure by you to give us adequate or accurate information in respect of the Products or Services.

8.3 All Charges are stated exclusive of value added tax (VAT) and other taxes applicable to the Products and Services. You must pay VAT

and other applicable taxes which are included in our invoices at the applicable rate(s).

- 8.4 We shall be entitled to invoice, and you shall pay, the Charges in accordance with the invoicing and payment terms set out in the Order Form or Quotation. If no such details are specified in the Order Form or Quotation you shall pay the Charges in advance of us commencing delivery of the Products and/or Services and within 30 days of the date of our invoice. We reserve the right to charge a partial advance sum at our discretion.
- 8.5 You shall pay all Charges without any set-off or withholding, unless otherwise agreed in writing with us.
- 8.6 If you dispute any invoice issued by us, you must notify us of such dispute within 10 Business Days / weeks setting out in reasonable detail the nature of your dispute. In the absence of such notice, you will be deemed to have accepted our invoice. You must pay the balance of the invoice which is not in dispute by the relevant due date.
- 8.7 Where Charges are not paid by you in accordance with this clause 8 we may (a) require you to pay all sums due under the Contract immediately on demand, and (b) charge interest (both before and after any judgment) on all amounts overdue from you a rate of 8 percent over the Bank of England base rate from time to time, such interest to accrue on a daily basis from the due date of payment until receipt by us of the overdue amount (including any accrued interest and compensation).
- 8.8 Unless expressly stated otherwise in writing, the Charges shall be exclusive of all costs and charges of packaging, insurance, transport, training and other ancillary costs and expenses (including hotel, subsistence, travelling and any other expenses reasonably incurred by the individuals whom MLR engages in connection with the Contract), which shall be invoiced to the Customer by MLR.

## 9. SECURITY

- 9.1 You are responsible for the security and use of all usernames and passwords and other security access codes, data and information (whether provided by us or otherwise) giving access to the Products and/or Services (**Access Details**). You must (and you will procure that Customer Personnel shall) keep the Access Details secure and to prevent unauthorised access to the Access Details. We will not be responsible for any misuse or unauthorised use of the Access Details or compromise of the Access Details except where directly caused by our negligence. You must let us know immediately if you become aware of any matter which you know or ought reasonably to be expected to know constitutes a threat to the security of the Products or Services.
- 9.2 We may restrict, suspend or terminate any aspect of the Services if we believe (acting reasonably) that the Access Details have been compromised or if we determine (at our sole discretion) that your (or the Customer Personnel's) use of the Products or Services constitutes a threat to the security of the Products or Services.

## 10. CHANGES TO THE SERVICES

- 10.1 We may change the Products or Services at any time in consultation with you in the following circumstances:
  - (a) where the change does not materially adversely affect the quality of the Products or Services;
  - (b) where there has been a change in the way any of our agents or Third Party Suppliers provide their services;
  - (c) to address a safety or security concern and/or to maintain the integrity, safety or security of the Service and/or any part of the systems used to provide the Service; or
  - (d) to comply with any law or legal obligation and/or any requirement of the any regulator or government agency.

## 11. SUSPENSION

Without prejudice to our other rights, we may upon written notice to you suspend the supply of Products or Services or any part of them where (a) you fail to meet any of your obligations under the Contract and where we (acting reasonably) determine that the Services should be suspended as a result, or (b) where we are entitled to terminate the Contract, or (c) we need to in order to comply with any order, instruction or request of a court, competent governmental or regulatory authority or the emergency services.

## 12. DEFECTS

- 12.1 In the event of an alleged defect in the Products or Services, the Customer shall:
  - (a) provide written notice of the defect to MLR (i) within 5 days of delivery of the Goods or, (ii) for Goods or Products that MLR is configuring or installing as part of the Services, within 5 days of completion of the Services as confirmed by MLR to the Customer;
  - (b) provide MLR with a reasonable opportunity of examining the relevant Products;
  - (c) (if asked to do so by MLR) return the Products to MLR's premises, at the Customer's risk and cost.
- 12.2 Subject to clause 12.3 and the Customer's compliance with clause 12.1, MLR shall, at its option repair or replace any Goods which do not comply with the warranty at clause 7.1, or reperform any Services that do not comply with the warranty at clause 3.1. This clause sets out the Customer's sole and exclusive remedy for defects in the Products or Services.
- 12.3 MLR shall not be liable for any defect in the Products or Services if:
  - (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 12.1(a);
  - (b) the defect arises because the Customer failed to follow MLR's (or the manufacturer's) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Products being operated outside of their intended use;
  - (d) the defect arises as a result of improper or defective construction works or siting not carried out by MLR, or other similar external influences which impact the functionality of the Products, including in relation to any structures to which the Products are affixed or connected or the environment in which the Products are used;
  - (e) the defect arises as a result of MLR following any instruction, drawing, design or specification supplied by the Customer;
  - (f) the Customer alters or repairs such Products (or permits a third party to do the same) without the written consent of MLR; or
  - (g) the defect arises as a result of fair wear and tear, wilful damage, negligent act or omission, abnormal working conditions, carelessness or improper treatment.

## 13. DURATION

MLR shall provide each Service from the relevant Activation Date until the completion of the Services, or until the relevant expiration or termination date set out in the Order Form or Quotation (as applicable), unless this Agreement is terminated earlier in accordance with its terms.

## 14. RIGHTS TO TERMINATE

- 14.1 Either party may terminate the Contract (or the provision of any individual Product or Service supplied pursuant to the Contract) with immediate effect by notice in writing if:
  - (a) the other party commits a material breach of the Contract and (where capable of remedy) does not remedy this breach within 3 days of receiving a notice specifying the breach; (b) the other party ceases trading or suffers an Insolvency Event.
- 14.2 MLR may terminate the Contract with immediate effect by notice in writing if:



- (a) you fail to pay any sums due to us whether pursuant to the Contract or any other contract for services that you have with us, and remain in default for more than 7 days;
- (b) you breach the terms of any Software Licence that is provided to you by us and/or our Third Party Suppliers;
- (c) you undergo a change of control (where 'control' has the meaning given in section 1124 of the Corporation Tax Act 2010);
- (d) any of our authorisations, licences or other permissions are revoked, withdrawn or not renewed for whatever reason.

14.3 Without affecting any other right or remedy available to it, we may terminate the Contract for convenience by giving you not less than 60 days' written notice.

## 15. CONSEQUENCES OF TERMINATION

15.1 If we terminate the Contract under any of clauses 14.1(a), 14.1(b), or 14.2(a) to 14.2(d), you must pay to us immediately on demand (a) all unpaid Charges due at the date of termination, and (b) an amount equal to the remaining Charges that you would have incurred over the remainder of the Contract term, had the termination not taken place (including for the avoidance of doubt all Third Party Charges).

15.2 In the event of termination of the Contract for any reason not referred to in clause 15.1, you must pay to us immediately on demand (a) all unpaid Charges due at the date of termination, and (b) an amount equal to any Third Party Charges that you or we have incurred or committed to pay in connection with the Contract, whether relating to the unexpired part of the term of the Contract or otherwise.

15.3 Upon termination of the Contract howsoever arising:

- (a) all licences granted to you under the Contract shall immediately terminate and you must immediately stop using the Software and the Services;
- (b) you must return Our Equipment to us and return or destroy any of our Confidential Information and Software which you have in your possession. If we ask you to, one of your authorised officers must certify to us that such return and/or destruction has taken place; and
- (c) we shall return all Customer Equipment or Customer Materials in our possession or control.

15.4 Any provisions that expressly or by implication are intended to remain in force, will continue to be in force even if the Contract has terminated.

15.5 On termination for any reason, any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## 16. INDEMNITIES

16.1 You agree to indemnify us in full and on demand against any loss, liabilities, claims, proceedings, demands (in each case each whether actual, pending or threatened), costs, expenses and damages (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 professional costs and expenses) suffered by us however arising out of or in connection with any of the following:

- (a) any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our receipt and/or use of Customer Equipment or Customer Materials;
- (b) any claim made against us by a third party for death, personal injury, damage to property, or otherwise, to the extent that such claim is attributable to you or the Customer Personnel;
- (c) (i) the transfer or alleged transfer from you to us of any employee of yours pursuant to The Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**Transfer Regulations**") arising directly or indirectly as a result of you and us entering into an Contract, and (ii) the termination of any such

employee's employment (including compensation for unfair dismissal, notice pay, statutory redundancy pay, or under Regulations 12 or 14 of the Transfer Regulations); and

- (d) any failure by you to pay any Charges, including Third Party Charges, or the bringing of any claim or any enforcement action relating to the Contract.

## 17. FORCE MAJEURE

17.1 **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 commotion or riots, war, threat of or preparation for 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, or failing to grant a necessary licence or consent; any action taken by a telecommunications operator or administrator; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors (including Third Party Suppliers); and any interruption or failure of utility service.

17.2 Save in respect of your obligations to pay the Charges, if either party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, that 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. If the period of delay or non-performance continues for 4 months, either party may terminate the Contract by giving 14 days' written notice to the other party.

## 18. CONFIDENTIALITY

18.1 Except to the extent set out in this clause 18 or where disclosure is expressly permitted elsewhere in the Contract, each party shall (a) treat the other party's Confidential Information as confidential, and (b) not disclose the other party's Confidential Information to any third party without the other party's prior written consent, and (c) use the other party's Confidential Information solely for the purposes of performing its obligations and exercising its rights in connection with this Agreement.

18.2 Clause 18.1 shall not apply to the extent that:

- (a) such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
- (b) such information was obtained from a third party without obligation of confidentiality; or
- (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of this agreement; or
- (d) such information was independently developed without access to the other party's Confidential Information.

18.3 MLR may disclose the Customer's Confidential Information to MLR's personnel, agents, and Third Party Suppliers who are involved (directly or indirectly) in the performance of the Contract.

18.4 Each party may disclose the other party's Confidential Information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 19. CUSTOMER DATA AND PERSONAL DATA

19.1 You are solely responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

19.2 In the remainder of this clause **controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures** shall have the meaning given in the Data Protection Legislation.

19.3 Both we and you agree to comply with our obligations under Data Protection Legislation and maintain all relevant registrations. You shall ensure that you have all necessary appropriate consents and



notices in place to enable lawful transfer of any personal data to us for the duration and purposes of the Contract.

19.4 If and to the extent that we process personal data in the capacity of a data processor in the course of performing the Contract, we will:

- (a) process that personal data only on the terms of the Contract and any additional written instructions issued by you, unless we are required by applicable laws to otherwise process that personal data;
- (b) ensure that all of our personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (c) not transfer any personal data outside of the UK unless the transfer is in accordance with the Data Protection Legislation;
- (d) assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify you without undue delay on becoming aware of a personal data breach;
- (f) following your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by applicable law to store the personal data;
- (g) maintain complete and accurate records and information to demonstrate our compliance with this clause 19.4; and
- (h) allow for audits by you or your designated auditor on not less than 3 weeks' prior written notice and during our normal business hours, solely for the purpose of your verification of our compliance with this clause 19.4.

19.5 If and to the extent that each party will act an independent controller of personal data in connection with its sharing of personal data pursuant to this Agreement, each party shall:

- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the personal data to the parties to this Contract, the employees of each party, any third parties engaged to perform obligations in connection with this agreement (**Permitted Recipients**) for the purpose of performing their obligations under this Contract;
- (b) give full information to any data subject whose personal data may be processed under this Contract of the nature of such processing;
- (c) process the personal data only for the purpose of performing their obligations under this Contract, and not disclose or allow access to the personal data to anyone other than the Permitted Recipients;
- (d) ensure that all Permitted Recipients are subject to written contractual obligations concerning the personal data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- (e) assist the other in complying with all applicable requirements of the Data Protection Legislation (including assisting the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the information commissioner or other regulators);
- (f) provide the other party with reasonable assistance in complying with any data subject rights request;
- (g) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- (h) not transfer any personal data received from any data discloser outside the UK unless the transfer is in accordance with the Data Protection Legislation.

19.6 The scope and purpose of processing of personal data by us is as follows:

19.7 Processing of the Protected Data by MLR under this Agreement shall be for the scope, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out below:

- (a) *Scope of processing*: provision of Products and Services relating to the Customer's network and connectivity requirements.
- (b) *Duration of the processing*: for the duration of this Agreement and any related agreement between the parties covering the provision of the Services to the Customer, or such shorter period where the processing is no longer authorised or no longer necessary for the purpose referred to above or for compliance with Applicable Laws, and for so long following the term of this Agreement as the personal data may be stored in MLR's backup systems in the usual course of business.
- (c) *Nature of the processing*: the handling, storing, copying, recording, using, disclosure by transmission, and erasing of Customer Data to enable provision of the Products and Services.
- (d) *Purpose of the processing*: to enable the provision of the Products and Services to the Customer.
- (e) *Type of Personal Data*: Personal data provided to MLR by or on behalf of the Customer, including Personal Data provided directly to MLR by a data subject or third party on the instruction of the Customer. Personal data processed under this Agreement will include (depending on the scope of the Products and Services) the name, email address, IP address of the Customer's employees.
- (f) *Categories of Data Subjects*: Personal Data related to individuals associated with the Customer (including its past, current and future directors, officers, employees, agents, contractors, customers and suppliers).

19.8 You consent to us appointing each of our Third Party Suppliers and agents as third-party processors of personal data, and to us transferring personal data outside of the UK in connection with the performance of the Contract. We have entered or (as the case may be) will enter with our third-party processors into a written agreement incorporating terms which are substantially similar to those set out in this clause.

## 20. INTELLECTUAL PROPERTY

20.1 You acknowledge and agree that:

- (a) any and all Intellectual Property Rights created, developed, subsisting or used in or in connection with any of the Products, Services, Our Equipment and/or any Software (and any improvements or variations thereto) and related documentation and materials, are and shall remain the sole property of us or our Third Party Suppliers, as applicable;
- (b) all Intellectual Property Rights owned by us at the Effective Date and generated by us or on our behalf during the course of the performance of the Contract shall be owned by us or our Third Party Suppliers, as applicable; and
- (c) you shall have no rights in or to the Products, Services or Software other than those expressly referred to in the Contract and/or the Software Licence.

20.2 You shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any of our (or our Third Party Supplier's) Intellectual Property Rights and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.

20.3 You grant to us a non-exclusive licence with a right to grant sub licences to use Customer Materials solely to the extent and for the period necessary for us and/or our Third Party Suppliers to perform our or their obligations under the Contract, such licence to terminate no later than the termination of the Contract.

## 21. LIABILITY

21.1 Neither we nor you limit or exclude our liability for death or personal injury arising as a result of our negligence, for fraud and for any other liability which cannot be excluded or limited by law. This clause shall apply notwithstanding any conflicting provisions in the Contract.



21.2 This clause 21 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and subcontractors) to you, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise, under or in connection with the Contract.

21.3 Except for liability which falls under clause 21.1 and the Customer's obligation to pay the Charges under clause 8, each party's aggregate liability in respect of the Contract shall not exceed the total amount stated in the Quotation in respect of which the liability arises.

21.4 We will not be responsible and shall have no liability for:

(a) loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (in each case whether direct or indirect); (b)

loss or corruption of data;

(c) loss of use of any Customer Equipment or other property of the Customer;

(d) wasted management or staff time (in each case whether direct or indirect);

(e) any punitive, special, indirect or consequential loss or damage (even if foreseeable at the Effective Date and even if we were told about the possibility of such loss or damage);

(f) the acts or omissions of any third party, including other providers of telecommunications, computers or other equipment or services including internet services;

(g) any failure to perform or for delay in performing any obligation under the Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of the Contract by you or any Customer Personnel, or any act or omission of yours or any Customer Personnel;

(h) changes in any of our facilities, operations, procedures or the Services which render obsolete or necessitate modification or alteration to any of Customer Equipment, software and communication lines, including any public lines required by you to properly to access the Services;

(i) any costs which you incur prior to the Activation Date for a Service in anticipation of that Service being provided (including in relation to the production of marketing materials, business cards and changes made to any website); and/or

(j) any loss suffered by any third party or any liability to any third party.

21.5 Save as expressly set out in the Contract, to the fullest extent permitted by applicable law, the Products, Services and Software are provided to you without any express, implied, or statutory representation, warranty or condition of any kind.

21.6 You assume sole responsibility for results obtained from your use of the Products, Services and Software, and for all conclusions drawn from such use.

21.7 If a number of events give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.

## 22. NOTICES

22.1 Notices given under the Contract must be in writing and must be delivered by hand or registered post to the relevant party's registered office.

22.2 A notice will be treated as having been received:

(a) if delivered by hand in business hours in the place of receipt (**Business Hours**) on a Business Day, when actually delivered and if delivered by hand outside Business Hours, at the next commencement of Business Hours; and

(b) if sent by registered post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.

22.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

## 23. NON-SOLICITATION

23.1 You shall not (except with our prior written consent) directly or indirectly solicit or entice away (or attempt to solicit or entice away) any person employed or engaged by us in the performance of the Contract at any time during the term of the Contract and for a further period of 12 months after the termination of this agreement, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of our personnel.

23.2 If you commit any breach of clause 23.1, you shall, on demand, pay to us a sum equal to one year's basic salary or the annual fee that was payable by us to that employee, worker or independent contractor plus the recruitment costs incurred by us in replacing such person.

## 24. GENERAL PROVISIONS

24.1 If any provision of this Agreement, the Service Terms and/or the Order Form or Quotation is held to be invalid in whole or part (i) such provision shall be deemed not to form a part of the Contract and the enforceability of the remainder of the Contract shall not be affected; and (ii) you and we shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24.2 A delay in enforcing any of the provisions of the Contract shall not affect or restrict your or our rights arising under the Contract. Any waiver of any breach of a Contract will not be a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of that Contract.

24.3 Without affecting any of the provisions of the Contract, either party may assign or otherwise transfer the benefit of the Contract to any other person with the prior written consent of the other party (such consent not to be unreasonably withheld).

24.4 Except as otherwise stated in writing in the Contract, no variation to the terms of the Contract shall be valid unless agreed to in writing by a duly authorised representative of both you and us.

24.5 Nothing in the Contract is to be understood as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer.

24.6 You acknowledge that in entering into the Contract you do not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to the Contract or not) that is not set out in the Contract, or the documents referred to in it. You waive all rights and remedies which, but for this clause, might otherwise be available to you in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to you in respect of any representation, warranty, collateral contract or other assurance that is set out in the Contract is for breach of contract under the terms of the Contract.

24.7 Each Contract shall be construed in accordance with and governed by the laws of England and Wales, and in the event of any dispute relating to or arising from the Contract the parties agree to submit to the exclusive jurisdiction of the English courts, provided that we may enforce any judgment or court order against you anywhere in the world where you may have assets.

